

No. 12448

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United States  
Court of Appeals  
for the Ninth Circuit.

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UNITED STATES OF AMERICA,

Appellant,

vs.

FLORENCE K. LIVINGSTON, Executrix of the Will of Bronte M. Aikins, deceased (sued herein as B. M. Aikins) FLORENCE K. LIVINGSTON, executrix of the last will of Florence L. Kirchen, deceased, GEORGE B. PARKER, NELLE GRENVILLE PARKER, VERNON S. BATZ (also known as V. S. Batz), EDNA BATZ, D. M. JORDAN, GEORGE HAY CORPORATION, LTD., a corporation, HONOLULU OIL CORPORATION, a corporation, SEABOARD OIL COMPANY OF DELAWARE, a corporation and THE COUNTY OF KERN,

Appellees.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Northern Division.

APR -5 1950

PAUL P. O'BRIEN,



No. 12448

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United States  
Court of Appeals  
for the Ninth Circuit.

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UNITED STATES OF AMERICA,

Appellant,

vs.

FLORENCE K. LIVINGSTON, Executrix of the Will of Bronte M. Aikins, deceased (sued herein as B. M. Aikins) FLORENCE K. LIVINGSTON, executrix of the last will of Florence L. Kirchen, deceased, GEORGE B. PARKER, NELLE GRENVILLE PARKER, VERNON S. BATZ (also known as V. S. Batz), EDNA BATZ, D. M. JORDAN, GEORGE HAY CORPORATION, LTD., a corporation, HONOLULU OIL CORPORATION, a corporation, SEABOARD OIL COMPANY OF DELAWARE, a corporation and THE COUNTY OF KERN,

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Appeal from the United States District Court,  
Southern District of California,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the Southern District of California, Northern Division.

Civil Action No. 617-ND

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. L. AIKINS, B. M. AIKINS, FLORENCE L. KIRCHEN, GEORGE B. PARKER, NELLE GRENVILLE PARKER, VERNON S. BATZ (also known as V. S. BATZ), EDNA BATZ, D. M. JORDAN, GEORGE HAY CORPORATION, LTD., a corporation, HONOLULU OIL CORPORATION, a corporation, SEABOARD OIL COMPANY OF DELAWARE, a corporation, THE COUNTY OF KERN, JOHN DOE, RICHARD ROE, MARY COE, BLACK CORPORATION, and WHITE CORPORATION,

Defendants.

COMPLAINT TO REMOVE CLOUDS, TO QUIET TITLE AND TO ENJOIN TRESPASSES ON CERTAIN REAL PROPERTY IN KERN COUNTY, CALIFORNIA.

Plaintiff, United States of America, by James M. Carter, United States Attorney for the Southern District of California, and Francis B. Critchlow, Special Assistant to the Attorney General,

acting under the direction of the Attorney General of the United States, brings this suit against the defendants above named and for its cause of action states:

I.

Defendants A. L. Aikins and B. M. Aikins are wife and husband. Defendants George B. Parker and Nelle Grenville Parker are husband and wife. Defendants George B. Parker and Nelle Grenville Parker are husband and wife. Defendants Vernon S. Batz and Edna Batz are husband and wife. Defendants Florence L. Kirchen and D. M. Jordan are widows. Each of the aforesaid defendants is a citizen and resident of the State of California.

II.

Defendant George Hay Corporation, Ltd., is a corporation incorporated under the laws of the State of California with its principal place of business in Kern County, California.

III.

Defendant Honolulu Oil Corporation is a corporation incorporated under the laws of the State of Delaware, authorized to do and doing business in the State of California.

IV.

Defendant Seaboard Oil Company of Delaware is a corporation incorporated under the laws of the State of Delaware, authorized to do and doing business in the State of California.



## V.

Defendant County of Kern is a political subdivision of the State of California.

## VI.

Plaintiff is ignorant of and unable to ascertain the true names of defendants sued as John Doe, Richard Roe, Mary Coe, Black Corporation and White Corporation and, therefore, brings this action against them by the aforesaid fictitious names and prays that when the true names of said defendants are discovered they be served with process herein and the action thereafter proceed against them by their true names.

## VII.

At all times herein material, plaintiff was and now is the owner in fee simple of certain lots, pieces or parcels of land in the County of Kern, State of California, to-wit:

Lots 2 to 11, inclusive, of Section 36, Township 29 South, Range 20 East, M.D.B.M., as the same are described and delineated by that certain Segregation Survey approved by the United States Surveyor General for California on April 7, 1915.

The aforesaid lots, pieces or parcels of land are also sometimes described as being—

that portion of the northeast quarter and the south half of Section thirty-six (36), Township twenty-nine (29) south, Range twenty (20) east, Mount Diablo Meridian, according to the survey thereof

approved November 18, 1893, which lies without the boundaries of Section thirty-six (36), Township twenty-nine (29) south, Range twenty (20) east, Mount Diablo Meridian, according to the survey thereof approved April 27, 1869.

### VIII.

Each of the defendants hereinabove named claims some estate, right, title or interest adverse to plaintiff in or to the lands described in paragraph VII hereof or in or to the oil and gas contained therein. Insofar as plaintiff is advised, all of said claims are under and are based upon the facts and circumstances hereinafter stated.

### IX.

On April 27, 1869, the United States Surveyor General for California approved a survey theretofore made of Township 29 South, Range 20 East, M.D.B.M., and thereupon, under and by virtue of the Act of Congress approved March 3, 1853 (10 Stat. 244, c 145), title became vested in the State of California to all of the area contained within the boundaries of Section 36 of said Township as the same were defined by said survey, excepting, however, 160 acres thereof which were upon the date of said survey subject to a pre-existing pre-emption claim of one Edwin M. Crocker. Said Section 36 as so surveyed and defined contained 640 acres and, upon the approval of said survey as aforesaid, the State of California assumed ownership, possession and control over all those portions of

said section not subject to said pre-emption claim and, since the approval of said survey, by various conveyances, the said State has sold and conveyed all of said portions containing in the aggregate 480 acres to various grantees who or whose successors in interest have at all subsequent times been and are now in possession thereof. A copy of the plat of said survey of April 27, 1869 is attached hereto, marked "Exhibit A," and made a part hereof.

### X.

On January 10, 1870, plaintiff granted by letters patent to the aforesaid Edwin M. Crocker the 160 acre parcel embraced in the pre-emption claim referred to in paragraph IX hereof and thereafter, on or about October 7, 1874, plaintiff, as indemnity to the State of California for its loss of acreage because of the said Crocker pre-emption and at the request and on the selection of said State, granted to said State 160 acres of land in Section 26, Township 29 South, Range 20 East, M.D.B.M., whereupon the State of California assumed ownership, possession and control over said 160 acres in said Section 26 and has since sold and conveyed the same to its grantees who or whose successors in interest have been at all times since and now are in possession thereof.

### XI.

In the year 1893, plaintiff, for the purpose of reconciling the boundaries of said Township 29 South, Range 20 East, as described in the aforementioned survey of April 27, 1869, with surveys



made of the adjacent Townships 29 South, Range 21 East, and 30 South, Range 20 East, caused a resurvey to be made of said Township 29 South, Range 20 East, M.D.B.M. The plat of said resurvey was approved by the United States Surveyor General for California on November 18, 1893. The reconciliation effected by said resurvey resulted in placing the east boundary line of said Township 29 South, Range 20 East, somewhat to the east of the east boundary of said Township as described by the survey of April 27, 1869, and in placing the south boundary of said Township somewhat to the south of the south boundary thereof as described by the said survey of April 27, 1869. As a result of the relocation of said township lines all of the exterior boundary lines of the area referred to as Section 36 by said resurvey were placed somewhat to the east and south of the corresponding exterior boundaries of Section 36 of said Township as the same were described and delineated in the survey of April 27, 1869. A copy of the plat of said resurvey of November 18, 1893 is attached hereto, marked "Exhibit B," and made a part hereof.

## XII.

In the year 1914, plaintiff, for the purpose of depicting on a plat the position on the ground of Section 36, Township 29 South, Range 20 East, M.D.B.M., and the portions thereof which had theretofore been granted to the State of California and to Edwin M. Crocker, as stated in paragraphs IX and X hereof, as compared with the position on the ground of the area designated as Section 36 in

the resurvey of said Township 29 South, Range 20 East, approved November 18, 1893, caused a segregation survey of the areas involved to be made which said segregation survey and the plat thereof were approved by the United States Surveyor General for California on April 7, 1915. A copy of the plat of said segregation survey, marked "Exhibit C," is attached hereto and made a part hereof.

### XIII.

Sometime prior to the month of November, 1915, one Judson H. Jordan made application to the Surveyor General and Register of the State Land Office of the State of California to purchase from said State that portion of the area designated as Section 36, Township 29 South, Range 20 East by the resurvey of November 18, 1893, which lies without the boundaries of Section 36, Township 29 South, Range 20 East, according to the survey approved as hereinbefore stated on April 27, 1869. The said application to purchase was disapproved and denied by said Surveyor General and Register upon the ground that the lands so sought to be purchased belonged to the United States and not to the State of California but, thereafter, on or about the 19th day of November, 1915, the said Surveyor General and Register of the State Land Office, acting under the compulsion of a writ of mandate issued out of the Superior Court of the City and County of San Francisco, caused a pretended deed or patent to be issued in the name of the State of California which said deed or patent

purported to grant and convey to said Judson H. Jordan the lands and premises in this paragraph and in paragraph VII described. Plaintiff herein was not a party to the suit in which said writ was issued.

#### XIV.

The State of California never has had any estate, right, title, or interest in or to the lands described in the pretended deed or patent issued as aforesaid to said Judson H. Jordan, or in or to any part thereof, and said pretended deed is and at all times has been inoperative and of no lawful force or effect. The defendants and each of them base their claims of right, title or interest in or to the said lands upon various pretended deeds, decrees, leases, agreements and other muniments of title all of which, as plaintiff is informed and believes and upon such information and belief alleges, stem from and are predicated upon the pretended deed or patent issued as aforesaid to said Judson H. Jordan. All of said documents are and at all times have been inoperative and of no lawful force or effect, and yet said documents and each of them and the said pretended deed or patent to said Judson H. Jordan cast clouds upon plaintiff's title to said lands and hinder and interfere with plaintiff's use and enjoyment thereof.

#### XV.

Each of the defendants named in paragraphs I, II, III and IV hereof have claimed and do claim



the right and have threatened and do threaten to enter upon the premises in paragraph VII described, to drill wells thereon for the production of oil and gas and by means thereof to extract from said lands and dispose of all the oil and gas contained therein, and plaintiff is informed and believes and upon such information and belief alleges that said defendants intend to and unless restrained by order of this court will carry out said threats.

### XVI.

The claims of the defendants in and to the lands involved herein and each and every of such claims is without right and none of said defendants have any right, title or interest in or to said lands or any part thereof or in or to the oil or gas contained therein. Plaintiff has no knowledge of any claims that may be made by the defendants or any of them in or to the lands and premises described herein or any part thereof, except as such claims are hereinabove stated in this complaint, and plaintiff calls upon the defendants and each of them to assert any and all such claims as they may have.

Wherefore, plaintiff demands:

1. That it be adjudged and declared that plaintiff is the absolute owner of the public lands described in paragraph VII and each and every part thereof and that none of the defendants have any right, title, interest or estate in or to the same or any part or parcel thereof:



2. That the deed or patent from the State of California to Judson H. Jordan, referred to in paragraphs XIII and XIV and the deeds, decrees, conveyances, transfers, assignments or other muniments of title under, through or by virtue of which the defendants or any of them claim or may claim any estate, right, title or interest in said lands, be adjudged to be null and void in so far as the same purport to convey any right, title, estate or interest in the lands described in paragraph VII or any part thereof, or to the oil or gas contained therein, and that the defendants and each of them be forever enjoined from asserting any claim whatsoever in or to said lands or any part thereof or in or to the oil or gas contained therein adversely to plaintiff;

3. That plaintiff have judgment for its costs and disbursements herein and such other and further relief as may be just.

/s/ JAMES M. CARTER,  
United States Attorney.

/s/ FRANCIS B. CRITCHLOW,  
Special Assistant to the Attorney General.  
Attorneys for Plaintiff  
United States of America.





of Public Land 23,063 27 Acres

29 South Range 120 East of Mount Smith. This is one of the ranges thereon for the purpose of the same.

Designated	Part of land
East	Part of land
West	Part of land
South	Part of land
North	Part of land

*Shirley (Soy)*  
*June 2nd 1861*









Braced Rubble Land surveyed by N. B. Carpenter 28 438, 97 Acres  
 • Lots 37 to 47 inclusive. Estimated 2000, 65 "  
 Approximate Area of Township 24929, 47 "

All Northern lines of subdivision are true 20° 47' N.  
 based on observations noted

The above Map of Township N° 20 South, Range N° 20 East of Base  
 Double Meridian is strictly conformable to the field notes of the survey  
 thereon on file in this Office which have been examined and approved.  
 U. S. Surveyor General's Office.  
 San Francisco, California.  
 November 1<sup>st</sup> 1893.

U. S. Survey Gen. Off.

Becker July 2, 1894

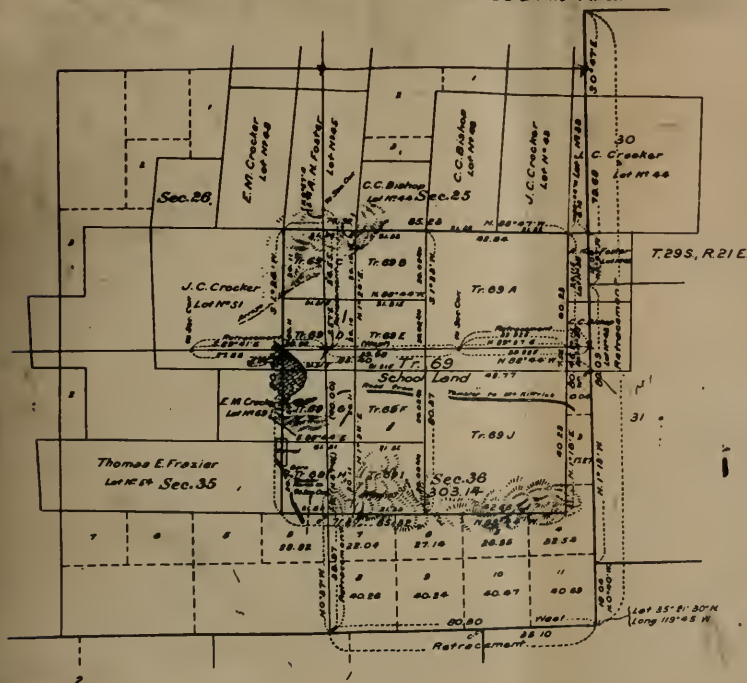
Surveyor's Name	By whom Surveyed	Date of Original	Amount of Survey	From Surveyed	When Sold
John B. Carpenter	John B. Carpenter	December 28 <sup>th</sup> 1890	One 1/2 Sec. of 36.3 A. P.O.E. 7.20 S. 1/2 S. 1/2 S. 1/2 S. 7.20 S. 1/2 S. 1/2 S. 1/2 S.	1893 1893	U. S. Land
John B. Carpenter	John B. Carpenter	December 28 <sup>th</sup> 1890	One 1/2 Sec. of 36.3 A. P.O.E. 7.20 S. 1/2 S. 1/2 S. 1/2 S. 7.20 S. 1/2 S. 1/2 S. 1/2 S.	1893 1893	U. S. Land





**PLAT**  
**OF THE SEGREGATION SURVEY OF**  
**Tract No 69 as subdivided into Tracts A, B, C, D, E, F, G, H, I and J,**  
**T. 29 S., R. 20 E., M.D.M., California.**

Scale: 20 chains 1 inch.



The tract designated herein as 69, represents the original portion of School Section 36, T. 29 S., R. 20 E., M.D.M., California, as defined on the ground by John Read, U.S. Deputy Surveyor, in 1865, in executing the survey of said township, plat of which was approved by the Surveyor General, April 27, 1868, and shows the relation thereof to the survey executed by N. B. Carpenter, U.S. Deputy Surveyor in 1893, plat of which was approved by the Surveyor General, November 18, 1893.

The tracts designated herein as 69-D, F, G and H, represent the portion as related to the lines of the survey executed by said N. B. Carpenter in 1893, of the SW 1/4 NW 1/4, NW 1/4 SW 1/4, and SW 1/4 SW 1/4 of original Sec. 36, T. 29 S., R. 20 E., M.D.M., patented to Edwin M. Crocker as a preemption, Entry No. 1378, dated January 10, 1870, said entry being based on the plat of survey executed by said John Read in 1865.

T. 30 S., R. 20 E.

I hereby certify that the above plat of the resurvey of the boundaries, and the survey of a portion of the subdivisions of Tract No 69, as subdivided into tracts designated herein as A, B, C, D, E, F, G, H, I and J, T. 29 S., R. 20 E., Mount Diablo Meridian California, executed by Lincoln E. Wilkes, U.S. Surveyor, January 13 to January 18, 1914, under his instructions dated September 10, 1912, is strictly conformable to the field notes of the resurvey thereof on file in this office, which have been examined and approved  
 U.S. Surveyor General's Office,  
 San Francisco, California,  
 April 7, 1915.

*Frank W. Havel*  
 U.S. Surveyor General  
 For California

Exhibit "C"



[Title of District Court and Cause.]

ANSWER

Answering the complaint of plaintiff, the defendants admit, deny, and allege as follows:

1. Defendants admit the averments contained in paragraphs I, II, III, IV, V, VIII (the first sentence thereof only), IX, X, XII, and XV of the complaint herein; and they deny the averments in the last sentence of paragraph VIII that all of their claims arise exclusively under and are based exclusively upon, or arise exclusively under or are based exclusively upon the facts and circumstances, or the facts or circumstances stated in paragraphs IX and following of the complaint herein.

2. Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the averments, or any of them, contained in paragraph VI of the complaint herein.

3. Defendants deny that at any time or times herein or in the complaint material plaintiff was or now is the owner in fee simple, or otherwise, or at all, of any of the lots, pieces or parcels of land described in paragraph VII of the complaint herein.

4. Defendants deny that the survey of Township 29 South, Range 20 East, M.D.B.M., averred in paragraph XI of the complaint herein to have been made in the year 1893, was a resurvey or was ordered, caused or made for the purpose of recon-

ciling the boundaries of said Township, as described in the survey thereof of April 27, 1869, with surveys made of the adjacent Townships 29 South, Range 21 East, and 30 South, Range 20 East; and in this behalf defendants allege that said survey which is averred to have been made in the year 1893 was a new survey and was ordered, caused and made because surveys made in 1869 and 1871 of said Townships 29 and 30 South, Ranges 20 and 21 East, had been demonstrated to be fraudulent, and in order to obliterate the lines and corners made by the surveyor thereof, one Reed, in said fraudulent surveys.

5. Defendants deny that the deed or patent issued by the State of California, as averred in paragraph XIII of the complaint herein, was a pretended deed or a pretended patent.

6. Defendants, answering paragraph XIV of the complaint herein, deny that the State of California never had any estate, right, title, or interest in or to any part of the lands described in the deed or patent issued to Judson H. Jordan; they deny that said deed or patent has ever been or is inoperative and of no lawful force or effect, or inoperative or of no lawful force or effect; they deny that any of the deeds, decrees, leases, agreements, or muniments of title upon which they base their claims of right, title and interest in and to the said lands, stem from and are predicated upon, or stem from or are predicated upon the deed or patent issued to Judson H. Jordan; they deny that



said deed or patent issued to Judson H. Jordan was or is a pretended deed or patent; and they deny that any of said documents is or ever has been inoperative and of no lawful force or effect, or inoperative or of no lawful force or effect.

7. Defendants deny the averments, and each of them, contained in the first sentence of paragraph XVI of the complaint herein.

For a First Affirmative Defense to the complaint herein, defendants aver:

1. Under date of March 22, 1912, one Judson H. Jordan made application to the Surveyor General and Register of the State Land Office of the State of California to purchase from said state the land described in paragraph VII of the complaint herein.

2. Said application of Judson H. Jordan to purchase said land was disapproved and denied by said Surveyor General and Register upon the chief ground, as expressed in his decision disapproving the same, that the lands sought to be purchased belonged to the United States and not to the State of California; but thereafter and on or about the 19th day of November, 1915, the said Surveyor General and Register of the State Land Office, acting under the compulsion of a writ of mandate issued out of and under the seal of the Superior Court for the City and County of San Francisco, State of California pursuant to a mandate of the District Court

of Appeal, First Appellate District of said state, in Civil Case No. 1347 (25 Cal. App. Rep. 166), decided July 23, 1914, ordering said Surveyor General to approve said Jordan's application to purchase said lands from said State, caused a deed or patent to be issued by the State of California to said Judson H. Jordan which said deed or patent granted and conveyed to said Judson H. Jordan the lands and premises described in said paragraph VII of the complaint herein.

3. The said Judson H. Jordan paid to the State of California the purchase price and all fees and costs required by the laws of the State of California to be paid for said lands.

4. Defendants are informed and believe and therefore allege that at all times from and after March 22, 1912 the plaintiff herein knew of the proceedings taken by said Judson H. Jordan and of the result thereof, and that said plaintiff raised no objection to any of said proceedings until on or about May 2, 1947.

5. The defendants herein, except Honolulu Oil Corporation, Seaboard Oil Company of Delaware, and the County of Kern, and except the defendants sued herein by fictitious names, are the owners in fee of the lands described in paragraph VII of the complaint herein.

6. Since on or about April 3, 1946 the defendants Honolulu Oil Corporation and Seaboard Oil Company of Delaware have been and they now are



lessees under a certain oil and gas lease of the said lands described in paragraph VII of the complaint herein.

Wherefore, defendants pray that plaintiff take nothing by its complaint herein; that their title to the lands described in paragraph VII of the complaint herein be quieted and set at rest against the claims of plaintiff, and in accordance with their respective interests therein; that they recover their costs herein expended; and for such other and further relief as to the Court may seem equitable.

/s/ BRONTE M. AIKINS,

Attorney for Defendants A. L. Aikins and B. M. Aikins.

/s/ PHILIP M. WAGY,

Attorney for Defendants George Hay Corporation, Ltd., George B. Parker, Nelle Grenville Parker, Vernon S. Batz, Edna Batz, D. M. Jordan.

/s/ PATRICIA LANE,

Attorney for Defendant Florence K. Livingston, as Executrix of the Last Will of Florence L. Kirchen, deceased.

/s/ A. W. MITCHEM.

/s/ ARCH H. VERNON,

/s/ HERBERT W. CLARK,

Attorneys for Defendants Honolulu Oil Corporation and Seaboard Oil Company of Delaware.

Affidavit of Service by mail attached.

[Endorsed]: Filed June 30, 1947.

[Title of District Court and Cause.]

### DISCLAIMER

Now comes the defendant, County of Kern, a political subdivision of the State of California, and alleges as follows:

#### I.

The defendant County of Kern disclaims any interest or claim in or to the lands described in paragraph VII of said Complaint, or in and to the oil and gas contained in said lands.

Wherefore, this defendant prays that it may go hence without judgment of any costs or disbursements being assessed against it.

/s/ NORBERT BAUMGARTEN,

Norbert Baumgarten, County Counsel, Attorney for  
Defendant, County of Kern.

Service of Copy acknowledged.

[Endorsed]: Filed June 30, 1947.

[Title of District Court and Cause.]

### AMENDMENT TO COMPLAINT

Comes now the plaintiff, United States of America, and amends paragraph X of its complaint herein to read as follows:

“On January 10, 1870, plaintiff granted by letters patent to the aforesaid Edwin M. Crocker the 160 acre parcel embraced in the pre-emption claim referred to in paragraph IX hereof and thereafter, on or about October 7, 1874, plaintiff, as indemnity to the State of California for its loss of acreage because of the said Crocker pre-emption and at the request and on the selection of said State, granted to said State 160 acres of land in Sections 26 and 35, Township 29 South, Range 20 East, M.D.B.M., as defined by said survey approved April 27, 1869, whereupon the State of California assumed ownership, possession and control over said 160 acres in said Sections 26 and 35, and has since sold and conveyed the same to its grantees who or whose successors in interest have been at all times since and now are in possession thereof.”

/s/ JAMES M. CARTER,  
U. S. Attorney.

/s/ FRANCIS B. CRITCHLOW,  
Special Assistant to the  
Attorney General,  
Attorneys for Plaintiff United States of America.

Copy of the foregoing amendment received and consent given to the filing thereof as of this 23rd day of July, 1947.

/s/ BRONTE M. AIKINS,  
Attorney for Defendants A. L. Aikins and B. M. Aikins.

/s/ PHILIP M. WAGY,  
Attorney for Defendants George Hay Corporation,  
Ltd., George B. Parker, Nelle Grenville Parker,  
Vernon S. Batz, Edna Batz, D. M. Jordan.

/s/ PATRICIA LANE,  
Attorney for Defendant Florence K. Livingston,  
as Executrix of the Last Will of Florence L.  
Kirchen, deceased.

/s/ A. W. MITCHEM,

/s/ ARCH H. VERNON,

/s/ HERBERT W. CLARK,  
Attorneys for Defendants Honolulu Oil Corporation  
and Seaboard Oil Company of Delaware.

Filing of foregoing amendment is permitted Aug.  
11, 1947.

/s/ C. E. BEAUMONT,  
Judge.

[Endorsed]: Filed August 11, 1947.



[Title of District Court and Cause.]

AMENDED ANSWER TO AMENDED  
COMPLAINT

Answering the amended complaint of plaintiff, the defendants admit, deny, and allege as follows:

1. Defendants admit the averments contained in paragraphs I, II, III, IV, V, VIII (the first sentence thereof only), X, XII, and XV of the amended complaint herein; and they deny the averments in the last sentence of paragraph VIII that all of their claims arise exclusively under and are based exclusively upon, or arise exclusively under or are based exclusively upon the facts and circumstances, or the facts or circumstances stated in paragraph IX and following of the amended complaint herein.

2. Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the averments, or any of them, contained in paragraph VI of the amended complaint herein.

3. Defendants deny that at any time or times herein or in the amended complaint material plaintiff was or now is the owner in fee simple, or otherwise, or at all, of any of the lots, pieces or parcels of land described in paragraph VII of the amended complaint herein.

4. Defendants, answering the averments in paragraph IX of the amended complaint, admit the



approval on April 27, 1869 by the United States Surveyor General for California of a survey alleged to have been theretofore made of Township 29 South, Range 20 East, M.D.B.M., and they are informed and believe and therefore allege that the said alleged survey was, upon examination made shortly prior to December 28, 1892, demonstrated to be fraudulent and the lines and corners thereof were directed to be and they were obliterated; they are without knowledge or information sufficient to form a belief as to the truth of the averments that said Section 36 as so surveyed and defined contained 640 or any acres, or that since the approval of said alleged survey the said State has sold and conveyed portions thereof containing in the aggregate 480 or any acres.

5. Defendants deny that the deed or patent issued by the State of California, as averred in paragraph XIII of the amended complaint herein, was a pretended deed or a pretended patent.

6. Defendants, answering paragraph XIV of the amended complaint herein, deny that the State of California never had any estate, right, title, or interest in or to any part of the lands described in the deed or patent issued to Judson H. Jordan; they deny that said deed or patent has ever been or is inoperative and of no lawful force or effect, or inoperative or of no lawful force or effect; they deny that any of the deeds, decrees, leases, agree-

ments, or muniments of title upon which they base their claims of right, title and interest in and to the said lands, stem from and are predicated upon, or stem from or are predicated upon the deed or patent issued to Judson H. Jordan; they deny that said deed or patent issued to Judson H. Jordan was or is a pretended deed or patent; and they deny that any of said documents is or ever has been inoperative and of no lawful force or effect, or inoperative or of no lawful force or effect.

7. Defendants deny the averments, and each of them, contained in the first sentence of paragraph XVI of the amended complaint herein.

For a First Affirmative Defense to the amended complaint therein, defendants aver:

1. Under date of March 22, 1912, one Judson H. Jordan made application to the Survey General and Register of the State Land Office of the State of California to purchase from said state the land described in paragraph VII of the amended complaint herein.

2. Said application of Judson H. Jordan to purchase said land was disapproved and denied by said Surveyor General and Register upon the chief ground, as expressed in his decision disapproving the same, that the lands sought to be purchased belonged to the United States and not to the State of California; but thereafter and on or about the 19th day of November, 1915, the said Surveyor Gen-

eral and Register of the State Land Office, acting under the compulsion of a writ of mandate issued out of and under the seal of the Superior Court for the City and County of San Francisco, State of California pursuant to a mandate of the District Court of Appeal, First Appellate District of said state, in Civil Case No. 1347 (25 Cal. App. Rep. 166), decided July 23, 1914, ordering said Surveyor General to approve said Jordan's application to purchase said lands from said State, caused a deed or patent to be issued by the State of California to said Judson H. Jordan which said deed or patent granted and conveyed to said Judson H. Jordan the lands and premises described in said paragraph VII of the amended complaint herein.

3. The said Judson H. Jordan paid to the State of California the purchase price and all fees and costs required by the laws of the State of California to be paid for said lands, and has paid all taxes levied and assessed upon the same.

4. Defendants are informed and believe and therefore allege that at all times from and after March 22, 1912 the plaintiff herein knew of the proceedings taken by said Judson H. Jordan and of the result thereof, and that said plaintiff raised no objection to any of said proceedings and made no claim to the said lands or any thereof until subsequent to May 2, 1947.

5. The defendants herein, except Honolulu Oil



Corporation, Seaboard Oil Company of Delaware, and the County of Kern, and except the defendants sued herein by fictitious names, are the owners in fee of the lands described in paragraph VII of the amended complaint herein.

6. Since on or about April 3, 1946 the defendants Honolulu Oil Corporation and Seaboard Oil Company of Delaware have been and they now are lessees under a certain oil and gas lease of the said lands described in paragraph VII of the amended complaint herein.

Wherefore, defendants pray that plaintiff take nothing by its amended complaint herein; that their title to the lands described in paragraph VII of the amended complaint herein be quieted and set at rest against the claims of plaintiff, and in accordance with their respective interests therein; that they recover their costs herein expended; and for such other and further relief as to the Court may seem equitable.

/s/ BRONTE M. AIKINS,

Attorney for Defendants A. L. Aikins and B. M. Aikins.

/s/ PHILIP M. WAGY,

Attorney for Defendants George Hay Corporation, Ltd., George B. Parker, Nelle Grenville Parker, Vernon S. Batz, Edna Batz, D. M. Jordan.

/s/ PATRICIA LANE,

Attorney for Defendant Florence K. Livingston, as Executrix of the Last Will of Florence L. Kirchen, deceased.

/s/ A. W. MITCHEM,

/s/ ARCH H. VERNON,

/s/ HERBERT W. CLARK,

Attorneys for Defendants Honolulu Oil Corporation  
and Seaboard Oil Company of Delaware.

Affidavit of Service by mail attached.

[Endorsed]: Filed August 10, 1947.

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[Title of District Court and Cause.]

### MEMORANDUM OPINION

Peirson M. Hall, Judge.

An original government survey by one Reed in 1869 of Township 29 South, Range 20 East, M. D. B. & M., showed Section 36 therein to contain 640 acres of land. In 1892 a re-survey of the entire township was ordered by the Government and made by one Carpenter, which re-survey was approved in 1894. In the meanwhile, the State of California had sold and issued patents, as school land, to all of the land which had been included in Section 36 of the Reed survey. By the Carpenter re-survey the southerly and easterly boundaries of the township were shifted south and east, and all the boundaries of the land designated as Section 36 in the Reed survey were shifted southward and eastward. The result of such shift was to show Section 36 on the



Carpenter survey to include only a portion of the lands previously included in Reed's Section 36, and also to include in Carpenter's Section 36 additional lands not theretofore designated on any survey as being in any Section 36, or even being within the township above mentioned.<sup>1</sup> The latter land was conveyed to Judson H. Jordan by the State of California as school land on December 1, 1914, pursuant to a mandate of the California Courts, issued as a result of *Jordan v. Kingsbury*, 25 Cal. App. 166 (1912). It is the land so transferred to Jordan to which the Government now seeks to quiet title as against the defendants who are the successors in interest of Jordan, who was the successor in interest of the State of California.

Not much can be added to what was said in *Jordan v. Kingsbury*, 25 Cal. App., 166, as to the passage of title from the United States to the State of California to the land involved here, which case concerned the identical property, identical surveys and identical chain of title as is involved in this case.

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<sup>1</sup>Carpenter's survey of Section 36 included about 330 acres of land which had been included by Reed in his previous survey of Section 36. The remainder of Reed's Section 36 was shown by Carpenter to be in what Carpenter designated as lying in Sections 25, 26 and 35. The total acreage shown by Carpenter to lie within the exterior boundaries of his Section 36 was 634.63.

A subsequent "segregation" survey by Wilkes in 1915 confirmed the boundaries of Section 36 as shown by Carpenter.

The fact that the United States was not a party to that suit does not alter the reason and logic supporting the conclusions of the court therein. This is particularly so in view of the fact that the court in that case, of necessity, had to construe the very statutes and surveys involved here, and moreover based its conclusions on the United States Supreme Court cases there cited, *Cragin v. Powell*, 128 U. S. 691, *Hardin v. Jordan*, 140 U. S. 371, *Gleason v. White* 199 U. S. 54, and particularly *Knight v. U. S. Land Association*, 142 U. S. 161, involving a re-survey, which the court held to be binding on the courts if the Department of the Interior then had jurisdiction and power to order and to make the re-survey.

Neither of the parties here is questioning the right or power of the Government to have made the Carpenter re-survey in 1893.

While the special defense raised in defendant's answer may be construed to be a plea in estoppel, the parties have not argued that point in the copious and excellent briefs filed.

Rather, the defendants have chosen to stand on the position that the Granting Act of 1853 (10 Stats. 244) construed in connection with the Survey Acts (43 U. S. C. A. 751 et seq.) and the Lieu Lands Act (43 U. S. C. 851, 852) clearly granted to the State of California at least two Sections of land of 640 acres each in each township, and also granted more than that amount if the surveys as actually

made by the Government showed the total acreage of either Sections 16 or 36 to exceed 640 acres, and that this is so whether such excess acreage is shown on an "original" survey, or by a "corrective" survey, or on a "re-survey."

The Government's position may be stated thusly: it concedes that under the Granting Act, the Survey Acts, and the Lieu Land Acts (*supra*) the State is entitled to 640 acres in, or in lieu of, each Section 16 and 36 in each township; it further concedes that if either or both Sections 16 and 36 contain more than 640 acres as shown by an original survey, such excess acreage vests in the State; but contends that if such original survey shows a total of 640 acres in either section, (Section 36 in this instance), the grant to the State is exhausted as to that section, even though on a re-survey such Section 36 is relocated so as to exclude a portion of the original Section 36 and include in the designated Section 36 of the re-survey, land not included in the original survey of Section 36. The government's contention boils down to this; that the State can and does under the Granting, Survey and Lieu Lands Acts, get any excess of 640 acres shown in a school section by an original survey, but that said Acts do not operate to grant such excess in event of a re-survey.

The land covered by the 1869 Reed Survey having passed to the State of California upon the approval of such survey, *U. S. v. Morrison*, 240 U. S. 192



and cases there cited, and having been sold and disposed of by the State prior to the Carpenter re-survey, as approved in 1894, could not be affected by such re-survey, as private rights had in the meanwhile intervened. The Reed Survey, even though declared "fraudulent" and "worthless" as a basis for disposal of the lands in the township, was sufficient to pass title to those depending on it. *Cragin v. Powell*, 128 U. S. 691; *U. S. v. State Investment Company*, 264 U. S. 206, and cases there cited.

It should be noted at this point that no charge or suggestion of fraud or misdealing is involved in this case, and that the record shows complete arms-length dealing between the Government and all parties concerned. It should also be noted that there is no charge or suggestion that the lands in question were known to be mineral in character, or of a class otherwise unavailable to the State at the time of the claimed passage of title to the State of California, in 1894.

The Granting Act of 1853 (10 Stats. 244, Sec. 6) did not put the terms of the grant in acres of land. It did not grant a maximum of 1280 acres of land in each township. It did not grant 640 acres in each Section 16 and in each Section 36. It did grant to the State of California for public school purposes Sections 16 and 36 in each township, without any mention of the number of acres. This is true also as to the Acts examined which granted lands to other states. None of them mentioned acreage; each



of them grants Sections. (In some instances other numbered Sections are granted.)

The Granting Act was passed before the public lands were surveyed. The grant therein contained did not become effective until the lands were identified by actual survey. *U. S. v. Morrison*, 240 U. S. 192. What was to be Sections 16 and 36 had thereafter to be determined. This was done by that department of the Government charged with the duty of making surveys and the administration of the public land laws. The Government at all times had control of the making and returning of the surveys. Thus, what constituted Sections 16 and 36 in (1) numbers of acres and (2) where they were to be located on the surface of the ground, were to be determined by the Government under the previously enacted Survey Statutes. These Statutes have been on the books many years and are now found in Sec. 751 et seq., of Title 43 U. S. C. A. They are derived from the Acts of May 18, 1796, (1 Stats. 464) and the Act of May 10th, 1800 (2 Stats. 73). The first paragraph of Section 751 provides for townships of six miles square; the third paragraph provides that "The township shall be subdivided into sections, containing, as nearly as may be, six hundred and forty acres each \* \* \*"; the fifth paragraph provides that where a township may be more or less than six miles square, "the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of

sections or half sections in such townships, according as the error may be in running the lines from east to west, or from north to south.”<sup>2</sup>

In any event, the requirements of the fifth paragraph of Section 751, have not been generally followed. It is a matter of common knowledge, that many townships in California have excesses on the easterly and southerly tiers of sections. Attached to the defendants’ brief is a list of Sections 16 and 36, totaling 145 Sections, in the State of California which have been surveyed and granted to the State as school lands, each of which exceeds 640 acres; 32

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<sup>2</sup>Upon examination of the Act of May 10th, 1800 (*supra.*) it is noted that the accomodation for excesses or deficiencies to be placed on the western or northern ranges of Sections in each township was according as the error may be in running the lines from east to west or “from south to north.” If the lines were so run on the ground the natural tendency of error in surveys would result in the excesses or deficiencies in Sections being on the north and west tiers of Sections in each township. But the Statute as it now stands and as it stood on the date of the surveys in question provided for the accomodation of errors as the lines were run “from north to south.” If the lines were run on the ground from north to south, the natural tendency of error would be to place the excess or deficiency on the southern tier of sections instead of the northern tier. An examination of the Statute failed to disclose just when this change in wording was made.

The Act of May 18, 1896 (1 Stats. 465) provided that fractional Sections in a township should be “annexed to, and sold with, the adjacent entire sections.”

were Sections 16, located in the middle tier of Sections. One Section 36 contained 1716.70 acres, not only on the original survey approved in 1866, but on the re-survey for subdivisional purposes approved in 1875 (Ex. A-1 and A-2 to plaintiff's brief). Six of the Sections contained over 1,000 acres. And it is admitted by the plaintiff that the statute has not been followed.

But the plaintiff contends that such Sections were all granted to the State of California, and their size not challenged by the Government, because they were indicated to be that size on the original surveys, and not on a re-survey. The effect of this contention is that the Granting Act applied only to original surveys and not to re-surveys. I cannot read the Granting Act, the Survey Acts and the Lieu Land Acts to mean that when the Government designates land as being within Section 36 on a re-survey, such land should not pass to the State any more than I can read such a construction of those Acts as to an original survey. There is certainly nothing in the language of any statute called to my attention, or which on independent research I have been able to find, which says so, or which would warrant such a construction. If under the Granting Act, the Survey Acts and the Lieu Land Acts the State of California was to be limited to 640 acres in, or in lieu of, each Section 16 and 36 and no more, then the Government had no right at any time to grant more than 640 acres in any Section



of any township, whether on original survey or re-survey, and the excesses in each of the 145 Sections above mentioned would be void.

No matter how the plaintiff's contentions are approached or viewed, they come down to this; that the Survey Acts of 1796 and 1800 (43 U. S. C. 751 et seq.) limited the total acreage of all Sections 16 and 36 to 640 acres, by virtue of the provisions therein that all Sections should contain 640 acres "as near as may be," and that excesses or deficiencies should be added to or deducted from the northern and Western ranges or tiers of Sections in each township. If that position is correct, I cannot see how any school section originally surveyed as containing more than 640 acres in California, or the other public land states can rest on a secure title. If that contention is correct, then the excesses of 640 acres of land in each original survey of school Sections are equally as void as under re-surveys of those Sections. And this would be so of all the vast areas in the public land states, as the Survey Statutes have been in force since the formation of the country.

Without question the Government at all times involved here, had the power to make surveys, to correct surveys, and to make re-surveys. *Cragin v. Powell*, 128 U. S. 691; *Knight v. U. S. Land Association*, 142 U. S. 161, 176. The Government therefore had the power to make and approve the Reed survey in 1869. By the same token it had the power to declare that the Reed survey was "fictitious"



“fraudulent,” “grossly erroneous and worthless as a basis for the disposal of the lands,”<sup>3</sup> in said township and to conclude and order that “the only proper remedy is a complete re-survey of the township,” and to order that all “lines and corners” made by Reed be “obliterated,” and, pursuant to such conclusion, to order the Carpenter re-survey of the entire township 29 South, Range 20 East, M. D. B. & M., both as to “exterior lines” of the township and as to the “entire subdivisional survey” (Exhibits 8 and 9). This conclusion was reached on November 29th, 1892. Carpenter was authorized to make the survey on December 28th, 1892. His survey of the entire township was approved on November 18th, 1893, and accepted by the Commissioner of the General Land Office on January 31, 1894.<sup>4</sup>

If, as contended by the Government, all Sections should contain 640 acres, as near as may be, and all excesses or deficiencies should be added to the northern or western tier of sections, then on the re-survey, it would have been a simple matter for

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<sup>3</sup>As heretofore indicated such findings could not affect intervening rights depending on such survey. *Cragin v. Powell*, supra.; *Knight v. U. S. Land Assn.*, supra.; *U. S. v. Morrison*, supra.; *U. S. v. State Investment Co.*, supra.

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<sup>4</sup>New survey superseded Reed survey and became the official survey. *Gleason v. White*, 199 U. S. 54, 60; *Cox v. Hart*, 260 U. S. 427; *In re Scott*, 172 Cal. 363.

the Government to have adhered to Reed's South and East lines of the township and added the overage to the township south of Township 29, and to the township east of Range 20. The land included in Carpenter's re-survey of the Township, which was not included in Reed's survey, was not in any township until Carpenter put it there. The land in question here would thus have fallen into the northerly tier of Sections in Township 30 South, Range 20 East, and into the westerly tier of Sections in Township 29 South, Range 21 East. As indicated, the Government had unquestioned control of the surveys, and instead of adding the additional or "wild" land to the adjacent northern tier of the next township south, or the adjacent western tier of the next Township East, chose to designate the land involved here as being a Section 36. By such designation the Government confirmed the grant to the State of California, as school lands, of the lands designated as Section 36 in the Carpenter re-survey which had not been included in the previous Reed survey. And upon the approval of the Carpenter re-survey the title to such additional land designated as Section 36 therein, immediately passed to the State of California. This conclusion would seem to be inescapable in view of the language of the Acts of Congress involved, and the authority of the cases decided by the Supreme Court, the earliest of which is *Cooper v. Roberts*, 18 How. 173. Others are reviewed and commented on by Mr. Justice Hughes in *U. S. v. Morrison*, 240 U. S. 192.

At page 207 of that case, a previous Land Office Decision of December 6th, 1887 (6 L. D. 412, 417) is quoted with approval as follows: "That the school land grant 'does not take effect until after survey, and if at that date the specific sections are in a condition to pass by the grant, the absolute fee to said sections immediately vests in the State, and if at that date said sections have been sold or disposed of, the State takes indemnity therefor.' " There is no question but that the land in question was in "a condition to pass" to the State, i.e., it was not known mineral land; it was not an Indian, Military, or other reservation; and it was not withdrawn or otherwise disposed of by the United States at the time of or prior to the approval of the Carpenter Survey.

As heretofore indicated, the Government has the power to make surveys and re-surveys, but it cannot by a re-survey or corrective survey deprive anyone of title who has received it in dependence upon the previous survey, *Cragin v. Powell*, supra, *U. S. v. State Investment Co.*, supra.<sup>5</sup> Under the authority of those cases, the Government could not now, or on the date of filing the instant suit, have deprived the State, or its successors, of title by making a re-survey of the lands in question, and designating them as other than being within the boundaries of Section 36, or throwing them into the northern and western tiers of the next township

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<sup>5</sup>See also *Churchill v. Beall*, 99 Cal. App. 482, 490.



southerly and easterly. That would, however, be the effect of conceding that their contention is correct. It would permit the Government to do in this action what it cannot do by a legally made re-survey.

The Government recognizes that intervening rights vest under erroneous or invalid surveys, and that changed or corrected surveys cannot affect such rights. It is doing so in this case, as to the lands in Reed's Section 36, which were put by Carpenter in Sections 25, 26, and 35. The thing which vested the title in the State to those lands was the approval of the Government of Reed's Survey, which showed them to be in his Section 36. *Cooper v. Roberts, et al, supra*. It follows just as logically that the lands in question vested in the State when Carpenter put them in Section 36 by his re-survey, and by the approval of that re-survey. If the Government has any right now to quiet title granted to the State for the lands in suit, which are now in Section 36, it has just as much right to quiet the title to the lands not now in Section 36, but which Reed put in his Section 36. But the Government, as indicated, concedes it cannot do this, because the title vested in the State on the approval of Reed's survey putting them in Section 36 and private rights have intervened. By the same token it cannot quiet title to the lands in question which were legally put in Sections 36, fifty five years ago, and are now in Section 36 and upon which intervening rights have attached to the State of California by the approval of the re-survey in 1894, and to its successors by



the deed from the State to Jordan as school lands thirty four years ago.

The plaintiff's contention that the School Land Grants are on the same footing as Railroad Land Grants does not seem to me to be well taken. There can be no doubt that Railroad grants being private grants, must be strictly construed. *Leavenworth, etc., v. U. S.* 92 U. S. 733; *U. S. v. Oregon, etc.*, 164 U. S. 526 and cases there cited. But from the cases a different rule is applied as to school land grants to the States. In *Cooper v. Roberts*, 18 How. 173, the court referred to the grant as a "compact" between the State of Michigan and the United States. In *United States v. Morrison*, *supra*, the court had under consideration the school land grant to Nevada, and held (page 205) that it was the intention that all school land grants to the different states should be considered on the same footing.<sup>6</sup> If that is so, then such grants are not a grant from the sovereign Government, to a subject citizen, but are grants from one sovereign, the United States, to another sovereign, the State, for public, and not private purposes of profit as in the railroad grants, and are not subject to such narrow construction.

The plaintiff makes one other contention: that the practice of the Land Office has been to limit the State to 640 acres on re-surveys of Sections 16 and 36, and that hence such departmental construction must be followed by the courts. There are three

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<sup>6</sup>To the same effect is *Hydenfeldt v. Daney, etc.*, 93 U. S. 634, 638.

reasons why this contention cannot prevail; first, the Land Office has not been consistent in such respect as evidenced by Exhibit F-3, attached to plaintiff's brief: second, the language of the Statute is plain and unambiguous, (this appears to be the first case of record where an attempt has been made by the Government to quiet title on a survey of excess school sections, and some weight should be given to that fact) and where this is so, the departmental action must yield to the language of the Statute, *Houghton v. Payne* 194 U. S. 88: and third, there is no evidence that the State or those claiming under it, contested the limitation of acreage on re-surveys in the instances cited by the plaintiff, or asserted any right to such excess acreage. Surely the State can waive any excess acreage. Here, it did not and does not.

Judgment will be for the defendant, who will prepare Findings of Fact and Conclusions of Law, unless the parties agree that this Memorandum will serve as such Findings and Conclusions under Federal Rules of Civil Procedure 52a.

Los Angeles, California, May 20th, 1949.

[Endorsed]: Filed May 20, 1949.

In the District Court of the United States in and  
for the Southern District of California, North-  
ern Division

No. 617-ND—Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. L. AIKINS, B. M. AIKINS, FLORENCE L.  
KIRCHEN, GEORGE B. PARKER, NELLE  
GRENVILLE PARKER, VERNON S. BATZ  
(Also Known as V. S. BATZ), EDNA BATZ,  
D. M. JORDAN, GEORGE HAY CORPO-  
RATION, LTD., a Corporation, HONOLULU  
OIL CORPORATION, a Corporation, SEA-  
BOARD OIL COMPANY OF DELAWARE,  
a Corporation, THE COUNTY OF KERN,  
JOHN DOE, RICHARD ROE, MARY COE,  
BLACK CORPORATION, and WHITE  
CORPORATION,

Defendants.

### JUDGMENT FOR DEFENDANTS

This cause having been tried and submitted to  
this Court, and the Court having heard and con-  
sidered all the evidence adduced and being now  
fully informed and advised in the premises and  
having made and filed in this cause its memoran-  
dum of decision dated May 20, 1949, in which its  
findings of fact and conclusions of law appear, and



counsel for the respective parties having agreed that the Court's findings of fact and conclusions of law do appear in said memorandum of decision, it is now by the Court

Considered, Ordered and Adjudged that the plaintiff, United States of America, has not now and, since January 31, 1894, has not had any right, title or interest of any kind or character whatsoever in or to the whole or any part of the portion or parcel of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, Mount Diablo Base Meridian, in the County of Kern, State of California, which is described in plaintiff's complaint herein as

Lots Two (2) to Eleven (11) of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, Mount Diablo Base Meridian, as the same are described and delineated by that certain Segregation Survey approved by the United States Surveyor General for California on April 7, 1915,

and in the Certificate of Purchase issued by the State Land Office of the State of California on December 1, 1914, to one Judson H. Jordan, as

That portion of the Northeast Quarter ( $NE\frac{1}{4}$ ) and the South Half ( $S\frac{1}{2}$ ) of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. M., according to the survey thereof approved November 18, 1893, which lies without the boundaries of Section Thirty-six (36), Township Twenty-nine (29) South, Range



Twenty (20) East, M. D. M., according to the survey thereof approved April 27, 1869; that plaintiff, the United States of America, has not now and, since January 31, 1894, has not had any right, title or interest of any kind or character in or to the oil or gas contained in the said described portions and parts of land or in any thereof; that neither the deed or patent from the State of California to Judson H. Jordan, referred to in paragraphs XIII and XIV of the complaint in this action, nor any of the deeds, decrees, conveyances, transfers, assignments or other muniments of title under, through or by virtue of which any of the defendants in this action claim any estate, right, title or interest in the land hereinabove described or to the oil or gas contained therein, is null or void as against the United States of America, and that each thereof, as well as the deed or patent from the State of California to Judson H. Jordan which is referred to in paragraphs XIII and XIV of the complaint in this action, is valid against any and all claims and objections made in this action by the United States of America with respect thereto.

Done this 22nd day of August, 1949.

/s/ PEIRSON M. HALL,

Judge, U. S. District Court.

The form of the foregoing judgment is approved.

/s/ FRANCIS B. CRITCHLOW,

Special Assistant to the Attorney General and Attorney for Plaintiff.

[Endorsed]: Filed and entered Aug. 22, 1949.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Defendants Above Named and to Messrs.  
Bronte M. Aikins, Philip M. Wagys, Patricia  
Lane, A. W. Mitchem, Arch H. Vernon and  
Herbert W. Clark, Their Attorneys:

Notice is hereby given that the United States of  
America, plaintiff above named, hereby appeals to  
United States Court of Appeals for the Ninth  
Circuit from the final judgment entered in this  
action on August 22, 1949.

/s/ JAMES M. CARTER,  
United States Attorney.

/s/ FRANCIS B. CRITCHLOW,  
Special Assistant to the Attorney General, Attor-  
neys for Plaintiff, United States of America.

[Endorsed]: Filed October 20, 1949.

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[Title of District Court and Cause.]

### STATEMENT OF POINTS UNDER RULE 75(D) FEDERAL RULES OF CIVIL PRO- CEDURE

On appeal in this case, appellant, United States  
of America, intends to rely on the following points:

1. That portion of the Northeast Quarter  
(NE $\frac{1}{4}$ ) and the South Half (S $\frac{1}{2}$ ) of Section  
Thirty-six (36), Township Twenty-nine (29) South,

Range Twenty (20) East, M. B. M., according to the survey thereof approved November 18, 1893, which lies without the boundaries of Section Thirty-six (36), said township and range, according to the survey approved April 27, 1869, never became the property of the State of California under its school land grant, and the District Court erred in holding otherwise.

2. The District Court erred in holding that the United States of America has not now and, since January 31, 1894, has not had any right, title or interest in or to the whole or any part of the lands described in the preceding paragraph.

/s/ ERNEST A. TOLIN,  
U. S. Attorney.

/s/ FRANCIS B. CRITCHLOW,  
Special Assistant to the Attorney General, Attorneys for Plaintiff, United States of America.

[Endorsed]: Filed November 10, 1949.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF  
RECORD ON APPEAL

To the Defendants Above Named and to Messrs.  
Bronte M. Aikins, Philip M. Waggy, Patricia  
Lane, A. W. Mitchem, Arch H. Vernon and  
Herbert W. Clark, Their Attorneys:

The United States of America, appellant herein,  
hereby designates for its record on appeal the complete record and all the proceedings and evidence in this case, including the following:

1. Complaint filed May 2, 1947.
2. Answer filed June 30, 1947.
3. Disclaimer of County of Kern filed June 30, 1947.
4. Amendment to complaint filed August 11, 1947.
5. Amended answer to amended complaint filed August 11, 1947.
6. Stipulation and order substituting Bronte M. Aikins, as executor of last will of A. L. Aikins, deceased, in place of defendant A. L. Aikins, filed April 22, 1948.
7. Stipulation and order substituting Florence K. Livingston as executrix of last will of Florence L. Kirchen, deceased, in place of Florence L. Kirchen. filed April 22, 1948.



8. Defendants' memorandum prior to trial filed April 23, 1948.

9. Plaintiff's memorandum prior to trial filed May 3, 1948.

10. The reporter's transcript of the evidence filed November 1, 1948.

11. All of the exhibits introduced during the trial, including plaintiff's exhibits 1, 1-A, 2, 3, 4, 4-A, 5, 6, 6-A, 6-B, 6-C, 7, 8, 9, 10, 11, 12, 12-A, 12-B, 12-C, 12-D, 12-E, 13, 14, 16, 16-A, 16-B, 16-C, 17, and defendants' exhibit 1 filed April 26, 1948.

12. All of the exhibits contained in the appendix to plaintiff's brief filed June 4, 1948, including the exhibits therein designated as A-1, A-2, B-1, B-2, C, D, E, F-1, F-2, F-3, G, and H.

13. Judge's memorandum filed May 20, 1949.

14. Judgment for defendants filed August 22, 1949.

15. Clerk's docket entries.

16. Notice of appeal filed October 20, 1949.

17. Statement of points.

18. This designation.

/s/ ERNEST A. TOLIN,

United States Attorney.

/s/ FRANCIS B. CRITCHLOW,

Special Assistant to the Attorney General, Attorneys for Plaintiff, United States of America.

[Endorsed]: Filed November 10, 1949.

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL PORTIONS  
OF RECORD, PROCEEDINGS AND EVIDENCE ON APPEAL UNDER RULE 75(A)  
FEDERAL RULES OF CIVIL PROCEDURE

To the Plaintiff Above Named and to Messrs. Ernest A. Tolin and Francis B. Critchlow, Its Attorneys:

Defendants above named, appellees herein, hereby designate for the record on appeal in addition to the contents of the record on appeal designated by plaintiffs herein, the following:

1. Copies of all the official plats of survey of various townships within the State of California made and approved by or under the authority of, and bearing the respective approval dates of, United States Surveyors General, the General Land Office, or the Department of the Interior, designated in Appendix "A" and Appendix "B" to defendants' opening brief filed herein June 5, 1948.

/s/ BRONTE M. AIKINS,  
Attorney for Defendants A. L. Aikins and B. M. Aikins.

/s/ PHILIP M. WAGY,  
Attorney for Defendants George Hay Corporation, Ltd., George B. Parker, Nelle Grenville Parker, Vernon S. Batz, Edna Batz, D. M. Jordan.

/s/ PATRICIA LANE,

Attorney for Defendant Florence K. Livingston,  
as Executrix of the Last Will of Florence L.  
Kirchen, Deceased.

/s/ A. W. MITCHEM,

/s/ ARCH H. VERNON,

/s/ HERBERT W. CLARK,

Attorneys for Defendants Honolulu Oil Corpora-  
tion and Seaboard Oil Company of Delaware.

[Endorsed]: Filed November 22, 1949.

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[Title of District Court and Cause.]

CLERK'S DOCKET ENTRIES.

1947

May 2—Fld compl to remove clouds, to quiet title  
& to enjoin trespass in Kern Co. Issd  
split Sum. Made Report J. S. 5.

May 19—Fld sum ret served as to A. L. Aikins,  
B. M. Aikins, Florence L. Kirchen & Hon-  
olulu Oil.

May 29—Fld sep stips and ords that defts Hono-  
lulu Oil Corp and Seaboard Oil Co. of  
Delaware; defts A. L. Aikins and B. M.  
Aikins hv to & includg 6/30/47 to plead,  
etc.

June 3—Fld sum ret serv.

June 10—Fld stip & ord ext time to answ of dfts  
Florence Livingston, George B. Parker,  
Nelle Grenville Parker, Vernon S. Batz,

1947

D. M. Jordan, & George Hay Corp to &  
incl 6/30/47.

June 30—Fld answer.

June 30—Fld disclmr of County of Kern.

July 22—Fld stip & ord thereon dfts hv to & inc  
8/11/47 to serve & file amended answ to  
compl.

Aug 11—Fld amended answer to amended complt.  
Fld amended complt.

Sept. 15—Ent ord contg to 10/6/47 10 am for set-  
ting.

Sept. 16—Ent ord contg to 11/17/47 2 pm for set-  
ting. Notif counsel.

Nov. 17—Ent ord setting for trial for March 1st,  
1948, 10 A.M. all counsel notified in writ-  
ing.

1948

Feb. 3—Ent ord (Y) vacating settg for trial of  
3/1/48 htf made, & ent ord resettg trial  
for 4/26/48 before J. Hall, to be tried  
either in LA or Fresno as Judge Hall  
may decide. Notif attys.

April 22—Fld Stip & Ord Bronte M. Aikins, as  
exec. of Last Will Alice L. Aikins, de-  
ceased be substd as deft in place of deft.  
A. L. Aikins; Fld Stip & Ord Florence  
K. Livingston, as Exec. last will Florence  
L. Kirchen, deceased, be substd as deft  
in place of Florence L. Kirchen.

April 23—Fld deft's Memo prior to trial.



1948

April 26—Ent proc on court trial before Judge Hall and ord submitting on simul. briefs to be filed in ten days and for each side to have five days to reply. Filed 17 exs. for Gov. Fld 1 ex for deft.

May 3—Fld Pltf's memo pur to local R. 12.

May 7—Fld stip and ord that plf and fts hv 30 days from 4/26/48 to file briefs and that either side may withdraw exbs to prepare briefs from Clerk.

May 12—Fld rect of Critchlow for exhibits.

June 3—Fld stip and ord that plfs and defts hv to & includg 6/7/48 to file written briefs and allowing parties ten days thereafter to file answering briefs.

June 4—Fld plfs brief with appendix to plfs brief in separate binder, on original only.

June 15—Fld plfs reply brief.

Nov 1—Fld reptr's transe proceedings 4/26/48.

1949

May 20—Fld Memorandum.

Aug. 8—Fld & ent JBK 5/254 judgmt for defts. Dock same. Made JS 6. Notified counsel.

Oct. 20—Fld pltfs notice of appeal. Mld copies to Messrs. Bronte M. Aikins, Philip M. Waggy, Patricia Lane, A. W. Mitchum, Arch H. Vernon & Herbert W. Clark, attys for defts.

1949

- Nov. 10—Fld pltfs design of contents of rec on appeal. Fld pltfs statmt of pts to be relied upon on appeal.
- Nov. 17—Fld pltfs affid svce by mail re: Design rec on Appeal.
- Nov. 21—Fld ord extendg time for flg & docketing rec on appeal & incldg 12/16/49.
- Nov. 22—Fld appellees desig of addnl ports of rec, proceedgs evid on appeal. Fld affid serv by mail.
- Dec. 2—Fld defts' opening brief. Fld defts' reply brief.
- Dec. 7—Fld substn of Herbert W. Clark, Gilbert E. Harris & A. W. Mitchem as attys for defts. Honolulu Oil Co. in place & stead of Herbert W. Clark, Arch H. Vernon and A. W. Mitchem.
- Dec. 14—Fld ord that time for flg rec etc on appeal be ext to & incldg 1/6/50.

In the District Court of the United States in and  
for the Southern District of California, North-  
ern Division

No. 617-ND—Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. L. AIKINS, et al.,

Defendants.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Honorable Peirson M. Hall, Judge Presiding.

Appearances:

For the Plaintiff:

JAMES M. CARTER,

United States Attorney,

Los Angeles 12, California; by

FRANCIS B. CRITCHLOW,

Special Assistant to the Attorney  
General,

Los Angeles 12, California.

For the Defendant Honolulu Oil Corporation  
and Seaboard Oil Company:

HERBERT W. CLARK, Esq.,

1110 Crocker Building,

San Francisco 4, California.

For Defendants George Hay Corporation, Ltd.,  
and Others:

PHILIP M. WAGY, Esq.,

310 Professional Building,

Bakersfield, California.

April 26, 1948; 10:00 o'Clock A. M.

\* \* \*

The Clerk: The last case on the calendar, your Honor, is 617, United States v. A. L. Aikins, et al., for trial.

For the record, you are Mr. Herbert W. Clark?

Mr. Clark: Yes.

The Clerk: Is Mr. Critchlow here?

Mr. Critchlow: Yes.

The Clerk: May I have the name of other counsel in the case?

Mr. Waggy: Philip M. Waggy; W-a-g-y.

Mr. Clark: There are no other counsel present for the defendants, although there is a total of six of record. I have authority from the others to proceed in their behalf.

The Court: Now that we may have the appearances at this time, the Attorney General, Tom Clark, and Mr. Carter, United States Attorney, and Mr. Critchlow, Special Assistant to the Attorney General, appearing for the plaintiff?

Mr. Critchlow: That is correct.

The Court: And for the defendants, Mr. Clark is appearing for——

Mr. Clark: Honolulu Oil Corporation, Seaboard Oil Company, and there are two other appearances for the same defendants, Mr. Arch H. Vernon, of Los Angeles, and Mr. A. W. Mitchem, of Los Angeles.

The Court: Who is appearing for the County of Kern? Who is the attorney of record?



Mr. Critchlow: There is a disclaimer filed, if your Honor please.

The Court: And George Hay Corporation?

Mr. Waggy: I am appearing for George Hay Corporation, Ltd., George B. Parker, Nelle G. Parker, Vernon S. Batz, Edna Batz and D. M. Jordan.

The Court: Very well.

Who is counsel of record for A. L. Aikins?

Mr. Clark: Bronte M. Aikins of San Francisco.

The Court: And B. M. Aikins for himself in proper? I suppose that is Bronte M. Aikins?

Mr. Clark: Yes, sir.

The Court: And the defendant Florence K. Livingston?

Mr. Clark: That is Patricia Lane.

The Court: And you, Mr. Clark, are authorized to appear for all counsel not present?

Mr. Clark: Yes, your Honor. I have written authorization from all except Mr. Mitchem of the Seaboard Oil Company, and I represent the Seaboard anyway in my own right. I have his oral authorization over the long distance telephone.

The Court: Very well. Are you ready to proceed?

Mr. Critchlow: The plaintiff is ready.

Mr. Clark: Yes, your Honor.

The Court: Proceed.

Mr. Critchlow: Has your Honor had an opportunity to familiarize himself with the pleadings?

The Court: Yes, I read the complaint, the an-

swer, the memoranda filed on behalf of the plaintiff and the memoranda filed on behalf of the defendant Honolulu Oil Corporation and Seaboard Oil Company.

Mr. Critchlow: In view of that fact, your Honor, do you think it would be helpful if plaintiff made an opening statement?

The Court: I do not think you need to make an opening statement.

Mr. Critchlow: I am perfectly willing to do it, if your Honor desires it.

The Court: I am filing your memoranda, all of them.

What is the issue of fact here? This is on for trial. Who is contesting what fact?

Mr. Critchlow: Under the pleadings I can see but one issue of fact which concerns the plaintiff, and that arises by reason of the fact that there is a denial by the defendants of our allegation to the effect that the title to the area designated as Section 36 by the Reed survey of 1869 passed to the State of California excepting 160 acres that went to the preemptioneer proper, and from that the title to that area, Section 36 as described by the Reed survey, was transferred by the State and by Crocker to the State of California, I mean from the State of California to California grantees, and that the grantees of the State and Crocker have been in possession of that particular area as defined as Section 36 by the Reed survey.

The Court: Excluding the 160 acres?

Mr. Critchlow: No, including the 160 acres, but the 160 acres is admitted by the answer—the State selected 160 acres in lieu of the 160 acres which they had lost——

The Court: By preemption?

Mr. Critchlow: By the preemption and took title of that, and the grantees of the State have been in possession ever since of that 160 acres, which was also described and taken as part of the areas surveyed by Reed in Township 29 South, Range 20 East. So that our contention is that the State got its 640 acres.

The Court: What evidence are you going to put in?

Mr. Critchlow: I am going to put in the deeds, the patents from the State and things of that sort.

The Court: Very well.

Mr. Clark: I thought Mr. Critchlow and I had arranged that there would be no necessity for doing that. We can stipulate to exactly what happened there and save the Court all this time and trouble.

The Court: I would kind of look at these deeds and patents. In fact, in reading your statements and briefs over I have not had a chance to read the various cases you have cited, I just read some of them and then very hurriedly, and also the statute—I don't know, it seems to me it is almost common knowledge that throughout California at least there are a great many sections at the bottoms and sides of the townships that are odd sizes



in view of the fact that in Section 852 Congress seemed to contemplate that some such situation might occur—I do not recall whether it is Section 852 or 851—but in 851 they talk about fractional sections and in 852 about fractional townships.

In view of that whole thing, it would seem to me that it would be very material and might be helpful in deciding this case to know what the Government has done with relation to all those other odd sized sections, what has been their course of conduct in California. Have they recognized the title to them, or have they insisted that they are the owner? Have they confirmed deeds heretofore in other sections?

Mr. Critchlow: If your Honor please, that was my idea, that we should put in the documents themselves, which will speak for themselves, these deeds and the other documents which have to do with the question as to the validity of this Reed survey, what California took under it, and what California's position has been under it.

The Court: And what the Government's position has been?

Mr. Critchlow: And what the Government's position has been under it.

So, your Honor, if there is any question of interpretation between the parties your Honor will have the documents themselves and they will be part of the record in case of an appeal.

The Court: You refer, or one of you do in one of your memoranda, to a holding or ruling or



finding or letter or document or something by the Surveyor General of the United States to the effect that the Reed survey was fraudulent.

Mr. Critchlow: We want to put in evidence all the documents which bear upon that fact.

The Court: Do you have that document available?

Mr. Critchlow: Yes, and that is part of the evidence.

The Court: Do you have the number of sections in California that are fractional in the public land survey?

Mr. Critchlow: If your Honor please, we have not. Our position with reference to that is this—I think it is Section 751 of the Revised Statutes——

The Court: Where it says they should be as near 640 acres as may be?

Mr. Critchlow: Yes, but the same section provides that the sections which are either short or long, that is, if they contain more than 640 acres or less than 640 acres, it shall be on the northern tier of sections in a township or on the western tier of sections, so that Section 36, which is always the southeast section, is by statute defined as an area containing 640 acres as near as may be.

Do I make myself clear?

The Court: I understand. I remember that provision in there. But it so happens in California, at least on the west side, and I suppose I can take judicial notice of it because what I have learned has been from the maps and surveys in the land offices

around here that I have been looking at for 20 years, as I remember all the odd sizes are on the east and southern sides.

Mr. Critchlow: No, on the north and west sides.

The Court: That is what the law says. There is a lot of odd sizes along on the east and south sides.

Mr. Critchlow: That is not my idea of the situation, if your Honor please. Your odd sections are on the north and west.

The Court: Then you have not looked at the maps.

Mr. Critchlow: I have looked at them. I haven't looked at every township in California, but I have looked at a lot of them.

The Court: Very well. Let us get the evidence in here.

Mr. Critchlow: All right.

The Court: Then, Mr. Critchlow, it just occurs to me that if that is the case you have not all the parties here defendants that you should have unless Section 30, which lies to the east of your original Reed Section 36 was all public land and it still is public land.

Mr. Critchlow: No, if your Honor please, I think we have—it may be that we will have to put this on the map.

The Court: In other words, if these extra acres should go on the western side and these extra acres should belong to whoever got that land——

Mr. Critchlow: They have already been acquired, if your Honor please.

The Court: Acquired by whom?

Mr. Critchlow: By whoever either purchased them from the Government or they were selected by the State.

The Court: Then if you are correct in your contention that this did not belong to these people, that it automatically went to these other people——

Mr. Critchlow: No, your Honor. I don't follow you.

The Court: Should they not be here as parties defendant?

Mr. Critchlow: I don't think so. I think it will appear, if your Honor please, from the plats and the evidence which I will put in.

The Court: Very well.

Mr. Critchlow: During the recess I will draw a little diagram on the blackboard so that we can refer to it.

The Court: Have you any better maps than the photostats you have here? The line photostats are all right but this photostat I cannot read.

Mr. Critchlow: I will admit they are very bad. I have the plats here, if your Honor please, certified copies of the plats.

The Court: Are they black?

Mr. Critchlow: They are black, yes, but they are a good deal more legible than the reduced copies. The copies which are attached to the complaint are reduced from these copies which are certified plats.

Mr. Clark: I wonder if I might take about two minutes, with Mr. Critchlow's consent, to explain the position that I shall ultimately take in this case?



There are two surveys here, as the Court has said, the Reed survey of 1869 and the subsequent survey made in 1893.

The Court: The Carpenter survey?

Mr. Clark: Yes, sir.

Now the defendants claim under the Carpenter survey, and except for historical purposes the Reed survey is of no concern to us at all except for historical purposes and for the information of the Court; our position legally will be, as I see it, at least mine will be, as I see it, that if the land surveyed by the Carpenter survey was at that time public land that the approval of the survey segregated it from the public domain and passed the title immediately under the Act of 1853 to the State of California.

The Court: As Section 36?

Mr. Clark: As Section 36. It didn't make any difference how much the State had previously gotten.

The Court: That is the reason I am asking about the odd sizes, these acres. I notice you say some Surveyor General testified that frequently 16 and 36 would be the odd sizes.

Mr. Clark: Yes.

Mr. Critchlow: If your Honor please, that will come in the regular order.

The Court: Very well. Get your evidence in.

Mr. Clark: We tried to get this in in writing, with seven pages of stipulation here, and Mr. Critchlow justifiably objected to some characterization in the stipulation that I presented to him.



Mr. Critchlow: First I will have marked for identification a certified copy of the contract dated February 4, 1869, employing John Reed as the Deputy United States Surveyor to survey certain areas in the state of California.

There is attached to that, the bond under the survey.

May that be marked?

The Clerk: Government's Exhibit No. 1 for identification.

(The document referred to was marked Government's Exhibit No. 1 for identification.)

The Court: Do you have any objection to these going into evidence?

Mr. Clark: None at all, your Honor.

The Court: Let us put them in evidence then.

The Clerk: Government's Exhibit No. 1 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 1.)

Mr. Clark: They are all documents of which the Court can take judicial notice I think anyhow.

Mr. Critchlow: In view of the fact that this refers to the prior contract, I ask that this document which I have in my hand be marked as plaintiff's Exhibit No. 1-A, which is a contract dated December 3, 1869, between Shuman Day, Surveyor General of the United States for California, and John Reed, which provides that the prior contract, which is plaintiff's Exhibit No. 1, is supplemented by

these instructions which authorize Reed to survey the divisional lines in Township 29 South, Range 20 East.

The Clerk: Government's Exhibit 1-A in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 1-A.)

Mr. Critchlow: Your Honor please, let me have a moment to mark these.

Now the next document will be a certified copy of the field notes of Township 29 South, Range 20 East, executed by John Reed and James E. Freeman, in so far as they relate to Section 36.

May that be marked as plaintiff's Exhibit 2.

The Clerk: Government's Exhibit 2 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 2.)

Mr. Critchlow: Now the next document is a certified copy of the official plat of Township 29 South, Range 20 East, bearing date of April 27, 1869. That is the plat of the Reed survey.

The Court: That is the whole township?

Mr. Critchlow: That is the whole township.

The Court: Very well. Let me see it

(The document referred to was passed to the Court.)

Mr. Critchlow: Now, if your Honor please, I offer in evidence a certified copy of a packet from

the State of California to Henry Miller and Charles Lux, dated the 1st day of March, 1873, which purports to convey to the grantees, Henry Miller and Charles Lux, 360 acres of Section 36, Township 29 South, Range 20 East.

May that be marked?

The Court: That was a patent?

Mr. Critchlow: Yes.

The Clerk calls my attention to the fact that the plat which I just handed your Honor has not been marked.

The Court: Very well. That will be No. 3.

The Clerk: Government's Exhibit No. 3 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 3.)

[Government's Exhibit 3 is identical to Exhibit A attached to the Complaint. See page 12 of this printed record.]

The Court: No. 4 will be the patent to Miller and Lux.

The Clerk: Government's Exhibit No. 4 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 4.)

The Court: Was that under the Swampland Act?

Mr. Critchlow: No. It is the selected State's 36. Now, if your Honor please, this document is a



photostatic copy and it is very difficult to read. I have made a copy of it.

The Court: Just attach it to the exhibit. We will call that Exhibit 4-A.

Have you seen it, counsel?

Mr. Clark: What is it, Mr. Critchlow?

Mr. Critchlow: It is a copy so that the Court can read it.

The Court: It is a copy of the Miller and Lux patent.

The Clerk: That will be Government's Exhibit 4-A in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 4-A.)

Mr. Critchlow: Now, if your Honor please, I ask to be marked as plaintiff's Exhibit 5, a certified copy of a patent from the United States of America to Edwin M. Crocker, dated the 15th day of April, 1871, covering 160 acres of land in Section 36, Township 29 South, Range 20 East.

The Court: Are either the 360 of the Miller and Lux property or this otherwise described?

Mr. Critchlow: Yes, they are described by the legal subdivisions.

The Court: Very well.

Mr. Critchlow: This is the preemption to Crocker which is mentioned in the pleadings which does not pass to the State by reason of the fact that it was occupied at the time the survey was approved.



(The document referred to was received in evidence and marked Government's Exhibit No. 5.)

Mr. Critchlow: Now, if your Honor please, I will ask to be marked as Government's No. 6, a patent from the State of California to one J. J. Mack, for the south half of the southeast quarter and the southeast quarter of the southwest quarter of Section 36 in Township 29 South, Range 20 East, Mount Diablo Meridian, containing 120 acres.

This patent is dated March 9, 1894.

The Court: What is the name?

Mr. Critchlow: J. J. Mack.

The Clerk: Government's Exhibit 6 for identification.

The Court: Is there some objection to that?

Mr. Clark: No.

Mr. Critchlow: I am going to offer some other documents and I will see if there is.

The Court: He says there is no objection so it is in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 6.)

## GOVERNMENT'S EXHIBIT No. 6

United States of America  
State of California

To all to whom these Presents shall Come, Greeting:

Whereas, Under the provisions of the several Acts of the Congress of the United States, entitled

“An Act to appropriate the proceeds of the sales of the Public Lands and to grant Pre-emption Rights,” approved September fourth, eighteen hundred and forty-one, Five Hundred Thousand Acres of the Public Lands were granted to the State of California; and an Act entitled “An Act to provide for the survey of the Public Lands in California, the granting of Pre-emption Rights therein, and for other purposes,” approved March third, eighteen hundred and fifty-three, Ten Sections of Land were granted for the erection of Public Buildings, and Seventy-two Sections for a Seminary of Learning, also, the Sixteenth and Thirty-Sixth Sections of each Township in said State; also, an Act entitled, “An Act donating Public Lands to the several States and Territories which may provide Colleges for the benefit of Agriculture and the Mechanic Arts,” approved July second, eighteen hundred and sixty-two, One Hundred and Fifty Thousand Acres of the Public Lands were also granted to said State;

And Whereas, The Legislature of the State of California has provided for the Sale and Conveyance of said Lands by Statutes enacted from time to time;

And Whereas, It appears by the Certificate of the Register of the State Land Office, No. 8459 issued in accordance with the provisions of law, bearing date the Ninth day of March, A. D. 1894, that the tracts of Grant of Sixteenth and Thirty-sixth Section School Land hereinafter described have been duly and properly located in accordance with law,

and that J. J. Mack is entitled to receive a Patent therefor.

Now, Therefore, The State of California hereby grants to the said J. J. Mack and to his heirs and assigns forever, the said tracts of land, located as aforesaid, and which are known and described as follows, to wit: The South half of Southeast quarter and Southeast quarter of Southwest quarter of Section Thirty-six (36) in Township Twenty-nine (29) South, Range Twenty (20) East, Mount Diablo Meridian containing One hundred and twenty (120) acres, together with all the privileges and appurtenances thereunto appertaining and belonging. To have and to hold the aforegranted premises to the said J. J. Mack and to his heirs and assigns, to him and their use and behoof forever

In Testimony Whereof, I, H. H. Markham, Governor of the State of California, have caused these Letters to be made Patent, and the Seal of the State of California to be hereunto affixed.

Given under my Hand, at the City of Sacramento, this the Ninth day of March, in the year of our Lord one thousand eight hundred and ninety-four.

H. H. MARKHAM,  
Governor of State.

Attest:

[Seal]

E. G. WAITE,  
Secretary of State

By WM. H. STEVENS,  
Deputy.



Countersigned:

[Seal]

THEO. REICHERT,

Register of State Land Office.

By D. M. ANGEIR,

Deputy.

A full, true and correct copy of the original recorded at the request of J. J. Mack, March 10, A.D. 1894, at 45 min. past one o'clock p.m.

T. A. WELLS,

Register of Deeds.

/s/ By NELSON W. WELLS,

Deputy.

State of California,

County of Kern—ss.

I, Chas. H. Shomate, County Recorder of said County, do hereby certify that the annexed is a whole true and correct copy of an original as will appear by reference to Book 8 of Patents Page 13 now in my office and that said copy has been compared with original and is a correct transcript therefrom.

Witness my hand and official seal this 19th day of March A.D., 1947.

CHAS. H. SHOMATE,

Recorder in and for the County of Kern, California.

By /s/ VADA SMITH,

Deputy.

Received in evidence April 26, 1948.



Mr. Critchlow: I am going to have marked for identification, and if there is no objection I will offer it, plaintiff's Exhibit 6-A, 6-B and 6-C. Exhibit 6-A is an application to purchase state lands made by J. J. Mack under date of July 30, 1892. The lands applied for are described in the application as being the south half of the southeast quarter and the southeast quarter of the southwest quarter of Section 36, Township 29 South, Range 20 East, Mount Diablo Meridian.

As Exhibit 6-B, a certificate of purchase of the State Land Office in the State of California dated November 29, 1892, issued to J. J. Mack and covering the lands described in plaintiff's Exhibit No. 6-A.

The next document, which will be marked for identification as 6-C, is a letter from the Surveyor General and Ex-officio Registrar of the State Land Office, addressed to the Title Insurance and Trust Company, Los Angeles, California, dated February 2, 1927.

I think that Mr. Clark should read that and see whether he has any objection to it.

(Conference between counsel.)

Mr. Clark: The Court will indulge me just a moment?

The Court: Why do we not have a recess? Do you have any other exhibits that he has not seen?

Mr. Critchlow: No, I think he has seen all the rest of them.

The Court: During the recess if you have any others why not show them to him?

Mr. Critchlow: There may be one or two others that I haven't shown him.

The Court: Very well. If we do that it may save some time

Mr. Clark: I am not going to try to keep them out of the record, I am merely reserving an objection to them after I look at them.

The Court: Very well. You may have an objection to this Exhibit 6-C.

Mr. Clark: Yes.

The Court: Exhibits 6-A and 6-B are admitted. They are public records. This is a private record.

The Clerk: Government's Exhibits 6-A and 6-B received in evidence.

(The documents referred to were received in evidence and marked Government's Exhibits 6-A and 6-B respectively.)





# APPLICATION TO PURCHASE STATE LANDS.

Location No. 3827

STATE OF CALIFORNIA.

County of Kern

Land District

To the State Surveyor-General, Sacramento:

I, J. J. Mack, of Kern County,

do hereby apply to purchase the land hereinafter described, and in support of my application I do solemnly swear that I am Nathaniel Born, a citizen of the United States, a resident of this State, of lawful age. That I desire to purchase from the State of California, under provisions of title eight of the Political Code, the following described land in Kern

County, to wit: South half of the South East quarter and the South East quarter of the South West Quarter of Section 36, in Township 24 South of Range 20 East, M. D. M.

Containing One Hundred and Twenty acres.

That there is no occupation of said land adverse to any that I have (a)

That I desire to purchase the same for my own use and benefit, and for the use or benefit of no other person or persons whomsoever, and that I have made no contract or agreement to sell the same (b)

That said land is not suitable for cultivation; that I have not entered any portion of any lands mentioned in section three thousand four hundred and ninety-four of the Political Code (to wit, the unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and the lands selected in lieu thereof), which together with that now sought to be purchased, exceeds (c) thirty and twenty acres, and that said land is not timbered land.

Subscribed and sworn to before me this

day of July, 1902

Post Office Address:

Ag. Mortality Notary Public

Barstow, Kern

County.

(a) If there is an adverse occupation, then the affidavit must show that the township has been vacated during these months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days since the plot was filed in the United States Land Office. (Section 3604, Political Code.)  
(b) If the land is suitable for cultivation, the affiant must show that he is an actual settler thereon.  
(c) If the land is suitable for cultivation, the affiant must show that he is entitled to purchase and hold real estate in his own name. (Section 3604, Political Code.)

Lands belonging to the state, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres in each tract, under such conditions as shall be prescribed by law. (Section 3604, Political Code.)  
Any false statement contained in the affidavit provided for in section three thousand four hundred and ninety-four, defeats the right of the applicant to purchase the land, or to receive any evidence of title, title, and if willfully false, subject him also to punishment for perjury. Timber lands belonging to this State shall be sold for cash only, and the Surveyor General and Register of the State Land Office must make and enforce all necessary rules and regulations to prevent the sale of or issuance of any evidence of title to any timber land of the State, except on payment in cash of the full price fixed therefor by law. (Section 3604, Political Code.)

All applications, under whatever Act, filed in the office of the Surveyor General, must be retained sixty days before approval, and must be approved in ten days, if no conflict by the Surveyor General, at the expiration of six months, subject, however, to the provisions of sections thirty-four hundred and six, and thirty-four hundred and seven of this Code, and all unapproved applications which have been on file over six months, wherein the approval has not been demanded, or wherein the conflict has not been referred to Court, or a demand made for an order of reference as provided in section thirty-four hundred and fourteen of the Political Code, shall be null and void.

This Act shall take effect on the first day of August, eighteen hundred and eighty-five, and the Surveyor General shall give notice to each applicant to be affected thereby, by sending to said applicant, or his attorney, a copy of this Act. (Section 3604, Political Code.)

Each Application must be accompanied by a deposit of \$20 and filing fee of \$5.

READ YOUR APPLICATION CAREFULLY.



Location No. 3827

## CERTIFICATE OF PURCHASE

No. 2091

Musonia Land District.

# State Land Office of the State of California.

STATE SCHOOL LAND GRANT

OF 16TH AND 36TH SECTIONS.



**Price Per Acre,**

One  $\frac{43}{100}$  Dollars

SACRAMENTO, 29<sup>th</sup> day of November, 1892.

Attest: \_\_\_\_\_  
 J. J. Black,  
 County Treasurer.

paid to the STATE OF CALIFORNIA the sum of One hundred & fifty 6500 DOLLARS, being payment in full  
 for 130 Acres of STATE SCHOOL LAND, described as follows: Sec 21, T. 1 N., R. 1 E., S. 1 E.,

$S\frac{1}{2}$  g'  $SE\frac{1}{4}$  and  $SE\frac{1}{4}$  of  $SW\frac{1}{4}$  of Section 36.

in Township No. 24 North Range No. 20 East. Mount Diablo Meridian.

Now, Therefore, be it Known, That the said J. F. Black, having made payment in full for the above described tract of land, is the purchaser of the same; and after having in all other respects complied with the requirements of the laws providing for the sale of said lands, and ON SURRENDERING THIS CERTIFICATE TO THE STATE OF CALIFORNIA, and after the said lands have been confirmed to the State, the said

lands, and ON SURRENDERING THIS CERTIFICATE TO THE STATE OF CALIFORNIA, and after the said lands have been confirmed to the State, the said \_\_\_\_\_, John H. Mack, \_\_\_\_\_, or his assigns, shall be entitled to receive a Patent for the same.

In Witness Whereof, The Register of said Land Office has herunto set his hand and affixed his seal of office, the day and date above mentioned.

**Register Note Land Office.**

County.





The Court: We will recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.)

April 26, 1948, 2:00 o'Clock P.M.

(Other court matters.)

The Court: Very well, Mr. Critchlow, you may proceed.

Mr. Critchlow: At the adjournment we were talking about Exhibit 6-C. I understand that there is no objection.

Mr. Clark: No objection, if the Court please.

Mr. Critchlow: If your Honor please, I call attention——

The Court: Just a moment. I was looking at some stipulations here in another matter. You say there was no objection to this exhibit?

Mr. Clark: No.

The Court: It will be admitted

The Clerk: 6-C admitted in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 6-C.)

## GOVERNMENT'S EXHIBIT No. 6-C

February 2, 1927.

Title Insurance and Trust Company,  
Title Insurance Building,  
Los Angeles, California.

Your Order No. 44237-WCL

Gentlemen:

I am in receipt of your letter of January 26, 1927, asking if it is my construction that the patent issued by the State, March 9, 1894, to J. J. Mack, for the S $\frac{1}{2}$  of SE $\frac{1}{4}$  and SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 36, T. 29 S., R. 20 E., M. D. M., granted the lands according to the survey thereof made by United States Deputy Surveyor H. B. Carpenter, which was approved in 1893, which a later survey by Carpenter, approved April 7, 1915, shows as Lots 9, 10 and 11.

Application No. 3827, Visalia Land District, of J. J. Mack, for the S $\frac{1}{2}$  of SE $\frac{1}{4}$  and SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 36, T. 29 S., R. 20 E., M. D. M., was filed in this office August 1, 1892, and full paid certificate of purchase was issued November 29, 1892. The only existent plat of survey of said Section 36 in 1892 being the one approved April 27, 1869, the patent issued to J. J. Mack for said land March 9, 1894, was issued according to said survey of April 27, 1869.

The sixteenth and thirty-sixth sections in this State were granted to the State of California for the purposes of public schools, by an Act of Congress, approved March 3, 1853, the statute being both a

grant and a conveyance, so far as the lands were of the character granted and otherwise subject thereto. No patent or listing is necessary to convey title to the State, the approval of the survey being deemed a sufficient designation of the particular subdivisions. (Cooper v. Roberts, 18 How. 173; Southern Development Co. v. Endersen, 200 Fed. 272-274.) The area that passed to the State under the survey of 1869 is 640 acres.

Yours Respectfully,

/s/ [Indistinguishable],

Surveyor General and ex officio Register of State  
Land Office.

BLD

BG

Received in evidence April 26, 1948.

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Mr. Clark: Would you mind explaining to the Court briefly what that is, Mr. Critchlow? I don't mean the map, but the letter.

Mr. Critchlow: The reason for it?

Mr. Clark: Yes, the reason for it.

Mr. Critchlow: The reason for that is this: We have in evidence Exhibit 4, which is a patent from the State of California covering these portions of Reed's Section 36. In other words, they were conveyed when that was the only survey of the area. They were conveyed to Miller and Lux, that is, as individuals, Henry Miller and Charles Lux, that quarter section, to Miller and Lux this half quar-



ter, and Miller and Lux that quarter quarter, and to Miller and Lux this half quarter. (Indicating on blackboard.) In other words, there were 360 acres all told.

The Court: Just a moment. You have a line across that northeast quarter there on the map.

Mr. Critchlow: I should explain that first.

For this purpose we will disregard this square, your Honor please, because this is the Carpenter survey which was made in 1893. When these patents which we are now discussing were issued, there was no such square.

Now in plaintiff's Exhibit 5, that was a patent from the United States to Crocker on a preemption entry which was in effect at the time of this 1869 survey. That patent covered this quarter, this 80 acres, which is a half section, and this quarter quarter down there. (Indicating on blackboard.) That was in 1871. That is 160 acres. That left the south half of the southwest quarter and the southeast quarter of the southwest quarter in the State of California.

The Court: 120 acres?

Mr. Critchlow: 120 acres.

Now in 1892, which was still prior to the Carpenter survey, in other words, at that time we may disregard these lines because there weren't any such lines, J. J. Mack filed an application with the State to purchase——

The Court: What is that total acreage?

Mr. Critchlow: 640.



The Court: Yes?

Mr. Critchlow: J. J. Mack filed with the State of California an application to purchase the south half of the southeast quarter and the southeast quarter of the southwest quarter, which is this 120 acres. A certificate of purchase was issued to him also in 1892 prior to this Carpenter survey.

Now the deed or the patent from the State, which is Exhibit 6, wasn't issued on that application and the certificate of purchase until 1894, which was after the Carpenter survey, but it was issued on this application and purchase in 1892. The contention of the State is, and the contention of the people is, that it was the intent to transfer by that patent the lands applied for which were on the basis of the Carpenter survey. That is the reason for putting in those documents.

The Court: Just a moment. The lands applied for were applied for on the basis of the Reed survey?

Mr. Critchlow: I misspoke myself—on the basis of the Reed survey. That is the Government's position and it is everybody's position, and it is the defendants' position, because if that isn't the effect of that patent then—in other words, if it should be construed as being issued on the basis of the Carpenter survey, the defendants in this case would have no interest in the land because the State would have conveyed it prior to the patent to Jordan in 1915.

Do I make myself clear?

The Court: I follow you. However, it would be helpful if you could have a diagram drawn by some draftsman covering that.

Mr. Critchlow: Yes.

The Court: I mean, with the various areas cross-hatched or colored differently so that the boundaries and everything will be clearly set forth.

Mr. Critchlow: I can do that, if your Honor please.

The Court: Your Carpenter survey added only what you have indicated there or did it add along the whole south tier of 36 or the whole south tier of the township?

Mr. Critchlow: Just as far as Section 36 is concerned, it added this area. (Indicating on black-board.)

The Court: Was there any added strip to the east?

Mr. Critchlow: On other sections?

The Court: No, to the east on 36, the north-east quarter.

Mr. Critchlow: This? (Indicating on black-board.)

The Court: No, above that.

Mr. Critchlow: Yes.

The Court: So the Carpenter survey was not limited to Section 36?

Mr. Critchlow: That is right.

The Court: It took in the whole township?

Mr. Critchlow: That is right And that will appear when we put in the Carpenter survey, if your Honor please.

I cannot do it all at once.

The Court: I understand.

Mr. Critchlow: Now in this connection I want to clear up this fact that the State and its grantees have true ownership and possession of that entire area, Section 36, under the Reed survey and I will then ask to be marked as Exhibit 7 a certified copy of a decree acquiring title in the case of Miller and Lux v. W. H. Beemis.

This is in the Superior Court of the State of California, in and for the County of Kern. It bears date of February 11, 1922.

It is certified by the County Recorder of Kern County, this being a Recorder's document.

The Clerk: Government's Exhibit 7 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 7.)

Mr. Critchlow: Now in connection with that, if your Honor please, I think it can be stipulated by opposing counsel that prior to the year 1912 all of the lands in Section 36, Township 29 South, Range 20 East, conveyed to Henry Miller and Charles Lux, to Edwin M. Crocker and to J. J. Mack, this are the conveyances referred to in plaintiff's Exhibits 4, 5 and 6, were by mean conveyances to Miller and Lux, Inc.

Mr. Clark: So stipulated.

The Court: What year was that?

Mr. Critchlow: Prior to the year 1912.

The Court: 640 acres by mean conveyances to Miller and Lux?



Mr. Critchlow: That is right.

Now, if your Honor please, I call attention to the allegation contained in Paragraph X as amended of the plaintiff's complaint.

The Court: That is the one filed May 2, 1947?

Mr. Critchlow: The amendment was filed August 11, 1947.

The Court: Amendment to the complaint?

Mr. Critchlow: That is correct.

The Court: Very well.

Mr. Critchlow: It amends Paragraph X of the complaint to read as follows:

“On January 10, 1870, plaintiff granted by letters patent to the aforesaid Edwin M. Crocker the 160 acre parcel embraced in the pre-emption claim referred to in Paragraph IX hereof and thereafter, on or about October 7, 1974, plaintiff, as indemnity to the State of California for its loss of acreage because of the said Crocker pre-emption and at the request and on the selection of said State, granted to said State 160 acres of land in Sections 26 and 35, Township 29 South, Range 20 East, M.D.B.M., as defined by said survey approved April 27, 1869, whereupon the State of California assumed ownership, possession and control over said 160 acres in said Sections 26 and 35, and has since sold and conveyed the same to its grantees who or whose successors in interest have been at all times since and now are in possession thereof.”

That paragraph is omitted from the answer. So we have shown that the State acquired and dis-



posed of 640 acres under its grant of Section 36 in this township.

Mr. Clark: I wouldn't want to put it that way. I would say the facts show—there is no use arguing it now—that the State acquired and disposed of 640 acres. Now whether it is under its grant is another question. I don't want anything to appear to limit the amount the State is entitled to, that is all.

The Court: Whatever it is under, they disposed of 640 acres?

Mr. Clark: That is right.

The Court: Prior to the Carpenter survey.

Mr. Clark: Right.

Mr. Critchlow: Prior to the Carpenter survey.

Mr. Clark: All prior to 1893.

The Court: Yes.

Mr. Critchlow: Now, if your Honor please, the Mack certificate of purchase was issued in 1892.

The Court: The application was in 1892 but the certificate was issued after the Carpenter survey.

Mr. Critchlow: No, the certificate of purchase was issued in 1892 but the State patent, the deed, the certificate of purchase, which evidences his right to a patent——

The Court: He did not get his patent until——

Mr. Critchlow: He did not get his patent until after the Carpenter survey.

The Court: Then that stipulation will be subject to whatever effect that patent might have had.

Mr. Critchlow: It is the Government's construction, the State's construction and the defendants' construction, that the patent is construed with reference to the prior application and certificate.

Mr. Clark: That is right.

Mr. Critchlow: With reference to the Reed survey.

Mr. Clark: The patent issued pursuant to the application and purchase.

The Court: The patent was merely a formal evidence of the right obtained by this certificate of purchase.

Mr. Clark: That is right. It is confirmatory of that certificate of purchase.

Mr. Critchlow: What is the next number, Mr. Clerk?

The Clerk: No. 8.

Mr. Critchlow: We ask that the following document be marked as plaintiff's Exhibit No. 8, which is a certified copy of a letter dated November 29, 1892, addressed to the United States Surveyor General, San Francisco, California.

I might add, that is the United States Surveyor General, not of the State. This is from the Assistant Commissioner of the General Land Office. It is rather a long letter. I will not take the time to read it.

The Court: Is this the one where he says the Reed survey is fraudulent?

Mr. Critchlow: Yes. I will call your attention to those remarks and to the—well, the whole tone of the letter.

The Court: Very well. I notice that he characterizes Reed's survey as "grossly erroneous and worthless as a basis for the disposal of the lands."

Mr. Critchlow: That is what he said.

The Court: And he speaks of the fraudulent Reed survey?

Mr. Critchlow: Yes.

The Court: Very well. Your next number will be No. 9.

The Clerk: Is this admitted, your Honor?

The Court: Yes, it is admitted.

The Clerk: This will be Government's Exhibit 8.

(The document referred to was received in evidence and marked Government's Exhibit No. 8.)

## GOVERNMENT'S EXHIBIT No. 8

No. 1019

United States of America

[Seal of The National Archives of the United States—1934.]

The National Archives

To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document

Government's Exhibit No. 8—(Continued)  
in the official custody of the Archivist of the United States.

Press Copies of "E" Letters Sent, Volume 90.

These documents are from the records of the General Land Office.

In testimony whereof, I, Solon J. Buck, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief or Acting Chief of the General Reference Division of the National Archives, in the District of Columbia, this 27th day of June, 1947.

/s/ SOLON J. BUCK,

Archivist of the United States.

[Seal] By /s/ BESS GLENN,

Acting Chief, General  
Reference Division.





Government's Exhibit No. 8—(Continued)  
in the official custody of the Archivist of the United States.

Press Copies of "E" Letters Sent, Volume 90.

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/s/ SOLON J. BUCK,

Archivist of the United States.

[Seal] By /s/ BESS GLENN,

Acting Chief, General  
Reference Division.

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161496-1891  
4883-1892

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE.

WASHINGTON, D. C.,

November 29, 1892.

The U. S. Surveyor General,  
San Francisco, California.

31r:

With your letter dated August 7, 1891, there were transmitted copies of the application and papers filed in support thereof, of Charles O'Connell for an additional survey in township 29 south, range 20 east. M.D.M.

Mr. O'Connell alleges that he is an actual settler upon what to the best of his belief will be a portion of section 36, township 29 south, range 20 east, and which lies between section 1, township 30 south, range 20 east, the north boundary of which was established by Deputy Surveyor James E. Freeman, and section 36, township 29 south, range 20 east, M.D.M., the south boundary of which was established by Deputy Surveyor John Reed.

The application of O'Connell is for the survey of an alleged hiatus about 33.50 chains in width, lying between Freeman's established north boundary of township 30 south, range 20 east, and Reed's south boundary of township 29 south, range 20 east, and is accompanied by an affidavit by John Gilcrest, to the effect that he had made an examination of the surveys in townships 29 and 30

from Dec. 11 - 1892 - 1881-1893.  
 " " " Jan. 4. 1893-4117-1893.  
 returning Spl. A. G. T. Farnsworth's report - field notes & correspondence.





## Government's Exhibit No. 8—(Continued)

south, range 20 east, and found evidence of the correctness of the Freeman survey, but that the Reed survey was largely fictitious, and that he (Reed) did not begin and close upon the Freeman survey as claimed in his field notes.

You refer in connection with O'Connell's application to a letter from your office, dated August 1, 1889, forwarding the petition of Henry Miller for a resurvey of townships 29 and 30 south, ranges 20 and 21 east, M.D.M., accompanied by a plat of a private survey of said townships, illustrating the alleged position of the lines therein. According to said diagram the Reed lines did not connect with nor close with the township surveys, but left strips of unsurveyed public land, varying in width from a few chains to nearly half a mile between the townships, except between townships 29 and 30 south, range 21 east, where said diagram showed an overlapping of the surveys. It was represented that owners of patented lands could not clearly define their boundaries, and you recommended that a resurvey be ordered.

By letter "E" of August 21, 1889, this office declined to accede to the request for a resurvey, but suggested a re-establishment of the lines by the county surveyor in accordance with the approved rules contained in circular of March 13, 1883.

In your letter transmitting Mr. O'Connell's application you recommended, in order to secure the survey of an unsurveyed strip of land, that Mr.

## Government's Exhibit No. 8—(Continued)

George S. Fawkner, special agent, be instructed to make an examination of the surveys in question to determine if the corners of the Reed survey in township 29 south, range 20 east M.D.M., were ever set, and if so, whether they were located as described in his notes, and whether his survey did connect properly with the Freeman survey, and in the event of the survey being found fictitious or incorrectly made, that a resurvey on the lines of former purported surveys and an additional survey to locate and define the boundaries of the alleged strip of unsurveyed land, be authorized in townships 29 and 30 south, ranges 20 and 21 east, M. D. M.

In view of your recommendation of an examination of the surveys in question, this office, under date of August 29, 1891, directed Special Agent Fawkner to proceed to the field and make a careful examination sufficiently extended to show the exact status of the surveys in township 29 south, range 20 east, and to submit full and explicit report and field notes with a diagram showing the relative positions of all corners on the lines retraced by him, and to note the positions of all settlers' claims, and indicate the same upon his diagram.

The examination was made by Mr. Fawkner as directed, and his report and field notes were duly received at this office, but owing to the great pressure of urgent work, the consideration of his report has been deferred.

## Government's Exhibit No. 8—(Continued)

An examination of the report of the special agent shows as follows:

Mr. Fawkner commenced his investigation at the corner to Tps. 29 and 30 S., Rs. 19 and 20 E., thence eastwardly upon the north boundary of T. 30 S., R. 20 E., as established by Deputy Freeman. A sufficient number of corners were found to fully identify Freeman's line which appears to have been correctly established, and in accordance with his field notes. The northeast corner of T. 30 S., R. 20 E., established by Freeman in 1855 for corner to Tps. 29 and 30 S., Rs. 20 and 21 E., was found to have its original stake in a fair state of preservation, and its exact location was confirmed by measurements from the quarter section corner on the south line of section 36, witnessed by bearing trees described by Freeman; also from the corner to sections 1, 6, 7 and 12 T. 30 S., Rs. 20 and 21 E., which latter corner had also the original stake.

From this corner Fawkner ran a line in accordance with courses given in the Reed and Henry field notes, finding no corners in proper positions, relative to the Freeman corner, but found certain corners established by Deputies Henry and Reed on the line between Tps. 29 S., Rs. 20 and 21 E., at distances varying from 16.95 chains to 27.84 chains east of his (Fawkner's) line, and at 6 miles 15.65 chains intersected the 7th standard parallel established by A. W. Von Schmidt and C. D. Gibbs



## Government's Exhibit No. 8—(Continued)

16.55 chains west of the corner to Tps. 29 S., Rs. 20 and 21 E. (Von Schmidt's corner) verified by measurements east and west on said 7th standard.

From the corner to Tps. 29 S., Rs. 20 and 21 E., as established by Von Schmidt, Fawkner retraced the line between Tps. 29 S., Rs. 20 and 21 E., as follows:

S.  $0^{\circ} 10'$  E. bet. secs. 1 and 6,

Var.  $13^{\circ} 30'$  E.

80.25 Cor. to secs. 1, 6, 7 & 12. (Henry).

S.  $0^{\circ} 10'$  E., bet. secs. 7 & 12.

Var.  $14^{\circ}$  E.

No mention of quarter sec. cor.

81.15 15 lks. E. of old Henry corner.

S.  $0^{\circ} 10'$  E. of line bet. secs. 13 and 18,

Var.  $13\frac{1}{2}^{\circ}$  E.

No mention of quar. sec. cor.

79.61 Cor. to secs. 13, 18, 19 and 24.

S.  $0^{\circ} 10'$  E. bet. secs. 19 & 24.

Var.  $13\frac{1}{2}^{\circ}$  E.

40.00 No corner.

60.50 Find one of Reed's posts marked

S. 19, R. 21

S. 30

R. 20 E. T. 29 S., with 2 and 4

notches, lying on ground, no mound nor pits.

80.10 Mound of earth & rocks, with charcoal, 50



## Government's Exhibit No. 8—(Continued)

lks E. of line. Henry's corner for secs. 19, 24, 25 and 30.

S.  $0^{\circ} 12'$  E. bet. secs. 25 and 30,

Var.  $14^{\circ}$  E. (as per Reed's notes).

40.00 No corner.

60.50 Reed's stake lying 5.71 chs. west of line, marks illegible. 5 notches on one edge.

80.00 No corner.

S.  $0^{\circ} 12'$  E. bet. secs. 31 & 36.

Var.  $14^{\circ}$  E. (as per Reed's notes).

40.00 No corner,

80.00 No corner.

98.22 Intersect S. boundary 32.54 chs. E. of Freeman's corner to Tps. 29 & 30 S., Rs., 20 & 21 E.

Mr. Fawkner then proceeded to the corner to sections 33 and 34 on south boundary of T. 29 S., R. 20 E. (Freeman's line) and running north at 21.86 chs. finds white oak tree, old blazes on both sides (Reed mentions a white oak tree 2 feet in diameter on his line between sections 33 and 34 at 21.13 chains); thence north to point for quarter section corner, but found only a stake set by U. S. Deputy Surveyor Capt. Frazer in a private survey.

From this stake Fawkner ran E., Var.  $14^{\circ}$  E. and at 38.67 found oak tree mentioned by Gilcrest one chain south of line (marked with the same lettering tools used by John Reed, but not mentioned in his notes), for corner to sections 3, 4, 33 and 34.

## Government's Exhibit No. 8—(Continued)

From this point E., Var.  $14^{\circ}$  E., and at 149.06 a new redwood post with two pieces of Reed's stake lying alongside 2.88 chains south of Fawkner's line. This is Reed's corner for sections 1, 2, 35 and 36. No corners were found between the oak tree and the redwood post.

From Reed's corner to sections 1, 2, 35 and 36 Fawkner ran east, Var.  $14^{\circ}$  E. and at the intersection with the south prolongation of the Reed line from corner to sections 25 and 36, the distance to the Freeman line was found to be 36.12 chains, this being the width of the hiatus between the Reed and Freeman lines.

Mr. Fawkner's measurement between the corner to Tps. 29 and 30 S., Rs. 20 and 21 E., and the 7th standard parallel is 6 miles 15.65 chains, an excess of 15.65 chains in the width of Tp. 29 S., but the hiatus between the Reed and Freeman lines between Tps. 29 and 30 S. is, according to Fawkner's finding 36.12 chains, the difference 20.47 chains being caused by the overlapping of the Reed and Henry lines on the line between sections 19 and 24.

Fawkner reports in regard to the connections made by John Reed with the Freeman line that he found only the apparent connection, on the line between sections 33 and 34, township 29 south, range 20 east, viz: the oak tree above referred to at 21.86 chains north of Freeman's corner to sections 3, 4, 33 and 34 (distance given by Reed 21.13) marked by old blazes and which may or may not be

## Government's Exhibit No. 8—(Continued)

the tree mentioned by Reed. Fawkner ran lines north from Freeman's corners, between sections 32 and 33; 33 and 34; 34 and 35; 35 and 36 without finding either section or quarter section corners in any instance. He also reports that the north boundary of T. 29 S., R. 20 E., west of Gibbs' survey, and which Reed purports to have established, is as devoid of corners as are the subdivision of lines of Reed.

In regard to the Reed survey, Fawkner expresses the opinion that Reed had cognizance of the Freeman line, nevertheless he arbitrarily established the corner to sections 35 and 36 near the El Temblor Ranch House the position of which is indicated in his notes as being 10 chains north and 3 chains east of his corner to sections 35 and 36.

From the condition of the lines and corners as determined by the examination of Special Agent George S. Fawkner, but one conclusion can be drawn, viz: that the surveys purported to have been made by John Reed, U. S. Deputy Surveyor, in T. 29 S., R. 20 E., are in the main, fictitious and that the lines and corners which were run and marked by him were arbitrarily established without regard to the previously established township boundaries, and if any considerable portion of the subdivisional lines were run by him, (which does not seem to be the case), they were grossly erroneous and worthless as a basis for the disposal of the lands in said township.



## Government's Exhibit No. 8—(Continued)

The surrounding surveys executed by other surveyors (Von Schmidt, Gibbs, Henry and Freeman), were found to have been plainly marked, and Reed, had he been disposed to make a correct survey, would have experienced no difficulty in making proper connections with the previously established lines.

In regard to the hiatus existing between the north boundary of T. 30 S., R. 20 E., as established by Deputy James E. Freeman, and the erroneous line partially marked by Deputy John Reed for the south boundary of T. 29 S., R. 20 E., it is apparent that if an independent additional survey were made covering the same, there would be a deficiency of about twenty chains in north and south measurement in T. 29 S., R. 20 E., between the Reed line and the 7th standard parallel which forms the north boundary of said township.

Under the circumstances of the case as developed by the field examination, I am of the opinion that a resurvey should not be made on the lines of the fraudulent Reed survey, neither should the hiatus between the Reed and Freeman lines be embraced in an additional survey. From a full and careful consideration of the case, I conclude that the only proper remedy is a complete resurvey of the township based upon the surveys of Freeman and others made prior to the Reed survey.

You are therefore hereby authorized to enter into



## Government's Exhibit No. 8—(Continued)

contract for a resurvey of those portions of the exterior lines and the entire subdivisional survey of T. 29 S., R. 20 E., M. D. M., purported to have been made by Deputy Surveyor, John Reed, said resurveys to be based upon the prior exterior surveys made by Deputy James E. Freeman, A. W. Von Schmidt, C. D. Gibbs and B. M. Henry. The surveys returned by Deputy Reed having been shown by the investigation made by Mr. Fawkner to be fictitious and fraudulent in character should not only be wholly ignored in the extension of the lines of the resurvey but all corners established by said Reed should be obliterated.

As there is every reason to believe from representations heretofore made (See surveyor general's letter of August 1, 1889) that the remainder of the surveys in T. 30 S., R. 20 E. and townships 29 and 30 south, range 21 east, M. D. M. purported to have been executed by Deputy Surveyor John Reed under his contracts dated February 4, 1869, and June 16, 1871, are as fictitious and fraudulent as his work in T. 29 S., R. 20 E., you may likewise enter into contract for a resurvey of all the lines, exterior and subdivisional in said townships which were embraced in the returns made by Deputy Reed under the contracts above named. The exterior and subdivisional lines established by Deputies Henry and Freeman made prior to the Reed surveys must be recognized and adopted as the basis for the resurveys, and all corners established by

## Government's Exhibit No. 8—(Continued)

Reed which may be found out of the proper position relative to the Henry and Freeman surveys should be destroyed.

In case the resurveys herein authorized cannot be contracted for at the minimum and intermediate rates allowed by law you will advertise for bids in accordance with departmental requirements of December, 1891. The cost of said resurveys will be chargeable to the apportionment to your district for the current fiscal year.

For your further information, I send you, in a separate package, Mr. Fawkner's report, field notes, and diagram, which you will please return to the files of this office, when you shall have examined the same.

Very respectfully,

/s/ Indistinguishable,

Assistant Commissioner.

Received in evidence April 26, 1948.

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The Clerk: Do you have another exhibit?

Mr. Critchlow: No.

The Court: The next is Government's Exhibit No. 9.

Mr. Critchlow: Next we offer in evidence, if your Honor please, a document dated December 28, 1892, directed to Howard B. Carpenter, United

States Deputy Surveyor, San Francisco, California, signed by the United States Surveyor General for California, which contains the specific instructions to Mr. Carpenter with reference to a resurvey of Township 29 South, Range 20 East.

The Court: Very well. That will be No. 9.

(The document referred to was received in evidence and marked Government's Exhibit No. 9.)

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GOVERNMENT'S EXHIBIT No. 9

No. 984

United States of America

[Seal of The National Archives of the United States—1934.]

The National Archives

To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Special Instructions from File Identified as California Surveying Contract and Bond 104.

This document is from the records of the General Land Office.

In testimony whereof, I, Solon J. Buck, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief or Acting Chief of



the General Reference Division of the National Archives, in the District of Columbia, this 20th day of June, 1947.

/s/ SOLON J. BUCK,

Archivist of the United  
States.

[Seal] By /s/ W. NEIL FRANKLIN,

Chief, General Reference  
Division.

Department of the Interior,  
Office of the U. S. Surveyor General,  
District of California

Referring to letter from S. G. January 4, 1893,  
re to report by Fawkner, and affirming the S. G.  
findings the instructions are considered correct.

/s/ W. M. J.

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San Francisco, Cal.  
December 28, 1892.

Howard B. Carpenter,  
U. S. Deputy Surveyor,  
San Francisco, Cal.

Sir:

In the execution of the remaining surveys of the public lands in townships 29 and 30 south, ranges 20 and 21 east, township 28 south, range 20 east, township 30 south, range 22 East, M.D.M., under your contract of December 28, 1892, you will proceed in the manner prescribed in the Manual of



Surveys of January 1, 1890, following the directions as noted upon the diagram herewith furnished you and which are made a part of these special instructions.

Under contract of February 4, 1869, and June 16, 1871, John Reed, deputy surveyor, returned to this office field notes of an alleged survey of the completion of the townships 29 and 30 south, ranges 20 and 21 east.

Recent examinations have demonstrated said surveys to be erroneous and fraudulent. You will therefore proceed to make a new survey of the lines indicated on the diagram in red, disregarding the Reed surveys, but recognizing the surveys of Von Schmidt, Gibbs, Freeman, and Henry as authentic, and making them a basis for starting and closing your work, in accordance with the findings of Department letter "E", dated November 29, 1892.

You will obliterate the lines and corners made by Reed in said fraudulent surveys, but will carefully locate any improvements or well defined claims of settlers indicated by fences or monuments in order that they may be shown upon the plats of the townships as a basis for adjustment, but before destroying Reed's corners as directed, you will ascertain their relation to your own surveys by bearing and distance. For the survey and location of these claims you will be paid at the same rate of compensation as provided for in your contract.

You will make only such retracements and re-

surveys of former approved official surveys as may be found to be absolutely essential to the proper completion of the new surveys as authorized, for which work you will be allowed the same rates of mileage as those named in your contract.

The lines of original approved surveys which are resurveyed in order to establish your beginning or closing points, must be specifically described in the field notes of your new surveys, and the necessity therefor clearly set forth, showing that such surveys have been obliterated, and also that a faithful search has been made therefor.

Great care must be exercised in order to prevent if possible needless retracements or resurveys; hence the requirements for detailed statements of the necessity and search for lines in question; all of which information must be embodied in the field notes of the surveys provided for in your contract.

Describe carefully the character of the land over which each mile runs, that there may be no misunderstanding in the final adjustment of your accounts.

Copies of the field notes of the approved surveys, upon which you will begin and close your work, will be furnished you.

Upon the completion of your work in the field, you will return the sworn field notes thereof, together with a topographical sketch of your surveys to this office. Your attention is particularly directed to the diagram, as it is believed that it represents very approximately the relative position of

the Von Schmidt surveys on the north, and the Freeman surveys on the south, and it is recommended that you first survey all of the exterior lines required to show the connection between said former surveys, and should they differ materially, you will report to this office and receive further instructions.

Very respectfully,

/s/ WM. M. PRATT,

U.S. Surveyor General  
for California.

Received in evidence April 26, 1948.

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Mr. Critchlow: I call your attention to the fact, if your Honor please, that in those instructions, while Carpenter is directed to obliterate the Reed monuments, he is also directed to record the position of those monuments by course and distance wherever he finds them.

The Court: You mean the statement "you will ascertain their relation to your own surveys by bearing and distance"?

Mr. Critchlow: That is correct.

The Court: But he states here that he "will carefully locate any improvements or well-defined claims of settlers indicated by fences or monuments."

Mr. Critchlow: Yes.

The Court: Very well. That is No. 9 in evidence.



Mr Critchlow: Next we offer as plaintiff's Exhibit No. 10, a certified copy of the field notes executed by Howard B. Carpenter of his survey of Township 29 South, Range 20 East, in so far as they relate to Section 36.

The Clerk: Government's Exhibit 10 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 10.)

The Court: That is only in so far as it relates to Section 36?

Mr. Critchlow: Yes, your Honor please. The entire Carpenter survey of the whole township would cover all of the sections in that township and in our opinion would have no bearing upon this case.

Next we offer in evidence plaintiff's exhibit No. 11, a certified copy of the plat of Township 29 South, Range 20 East, of the Carpenter survey, the plat having been approved by the United States Surveyor General of California November 18, 1893.

The Clerk: Government's Exhibit 11 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 11.)

[Government's Exhibit No. 11 is identical to Exhibit B attached to the Complaint. See page 13 of this printed record.]

The Court: Is the old Section 36 indicated on here?



Mr. Critchlow: Only indirectly, not specifically as such. You can note the three corners of it are shown, the southwest, the northwest and the northeast corners are shown in that plat and referred to.

The Court: Looking at this map now, and I myself having an interest in an oil and gas prospecting permit, I do not know whether that would disqualify me in this case or not. I seem to recognize it from this map. Is this what they called the old Temblor?

Mr. Critchlow: It is in that general vicinity, the general vicinity of the Temblor field.

Mr. Clark: In the vicinity of what?

The Court: What they called the old Temblor.

Mr. Clark: Yes, I think it is, your Honor

The Court: The old Temblor ranch house.

Mr. Clark: I suppose the defendants can waive anything of that kind, if it is troubling the Court. We would certainly be willing to do it on the record right now.

Mr. Critchlow: I may say this, there were a number of leases executed by Miller and Lux, these people, on this whole Section 36.

The Court: The oil and gas prospecting permit here went around—this was all in withdrawal lands?

Mr. Clark: These were not withdrawal lands.

The Court: Were these not included in the Pickett withdrawals and the Taft withdrawals?

Mr. Clark: No, they have never been included in the Taft 1909 law.

Mr. Critchlow: There were two prospecting permits issued, I believe.

The Court: Who were they issued to?

Mr. Critchlow: I think I have them here. There was one issued to Morris Cohen.

The Court: Yes, he was my client.

Mr. Critchlow: And one issued to Margaret C. Rutherford.

The Court: Morris Cohen was first in point of time and that was issued in 1920.

Mr. Critchlow: It was issued in 1920, reissued in May 1921 and it was canceled and reinstated and then finally canceled out.

The Court: When was it finally canceled?

Mr. Critchlow: I would have to go over these other papers, your Honor please. It doesn't show on this.

The Court: Let me see that a moment.

(The document referred to was passed to the Court.)

The Court: This was Lots 1, 2 and 3 of Section 25, Lots 1, 2, 3, 4 and 5 of the northwest quarter of the northeast quarter, west half of the east half, southeast quarter of the southeast quarter, east half of the southwest quarter of Section 34, Lot 7 in Section 35, Lots 2 and 11 inclusive in Section 36.

Mr. Critchlow: Lots 2 to 11 inclusive, your Honor please, is this area here. (indicating on black-board.) It is outside the boundaries of the old Section 36 by a segregation survey made by Wilkes, which is our next exhibit.

The Court: I was Morris Cohen's attorney. I

filed the application for a permit for him and had a contingent interest in it. As a matter of fact, I think I put up the filing fee myself, and represented him at all times and prepared all the papers which he filed with the General Land Office in connection with the matter. I remember that it was canceled and reinstated but I had forgotten now—when did you say it was finally canceled?

Mr. Critchlow: Maybe I can find it here. There was a failure to drill. That is my recollection of it.

The Court: That is right.

Mr. Critchlow: What is that number, your Honor?

The Court: 09237, Visalia. I do not think it ever got a Sacramento number. It might have. They moved the land office up there, I had forgotten when.

Mr. Clark: It occurs to me, if the Court please, that if litigant permit matters of that kind to bother them very much we would never get any lawsuits tried in California by the younger members of the bench at any rate. I don't want to embarrass Mr. Critchlow by making this suggestion, but I think it ought to be waived. We are willing to waive it.

The Court: Of necessity in the filing of a permit I would have to take the position that the land was subject to a prospecting permit.

Mr. Clark: I don't think there is anything to it one way or the other. We are perfectly willing to waive it, and we do waive it on the record.

Mr. Critchlow: The Government is perfectly willing to waive it on the record also.



Mr. Clark: Mr. Justice Wilbur used to embarrass me a great deal in the Circuit Court of Appeals about 30 years ago, when he represented a claim against the Honolulu Oil Company which resulted in some \$300,000 litigation. I never appeared before him after that but he didn't ask me who was involved in it, as he was so afraid that he would become disqualified in some way.

The Court: I am sorry, gentlemen, that I did not notice this before. I vaguely knew that general area because I had filed a great many applications for permits in connection with oil land matters but I did not recognize it until I saw this map. If that is the map that was attached to the complaint, it shows what a poor copy it was because I couldn't tell anything by the one that was attached to the complaint here.

Mr. Critchlow: That would be Exhibit B to the complaint.

The Court: I looked at that but I did not recognize it. I recognized it immediately here because this is the same size as the maps in the land office, isn't that correct?

Mr. Critchlow: Yes, that is a copy from the land office.

The Court: I traced all these lots off here.

Well, I don't want anyone to feel as though he is under any necessity of making any waiver. I do not feel conscious of any prejudice towards one view or the other in this case.

Mr. Critchlow: The Government is perfectly



satisfied that your Honor is not and could not be prejudiced one way or the other.

Mr. Clark: The defendants are satisfied. We will put the waiver in any form that Mr. Critchlow and I agree upon. It can be taken right in the record now.

The Court: Very well.

Mr. Clark: The Court suggested the possibility and we have waived it, if there is a possibility. We don't know, but even if there is one, we will waive it.

The Court: Do you agree?

Mr. Critchlow: That is agreed to.

The Court: Very well. No. 11 will be admitted.

Mr. Critchlow: Now, if your Honor please, I have here under one certificate 21 papers which were filed in connection with a file in the General Land Office called California Group 11. There are only five of them which I think have any direct bearing on this case, so if it is satisfactory with counsel I am going to ask that this certificate be detached—they are all under one certificate—so that I can offer merely the documents which I think are material.

The Court: Why not mark the whole thing for identification and then offer the ones that you want to in evidence and subsequently detach them? Do you know which ones they are now?

Mr. Critchlow: Yes.

The Court: No. 12 will be marked for identification and those in evidence will be 12-A, B, C, D and E.

Mr. Critchlow: No. 12 for identification is a file of documents under one certificate from the archives division, the documents being identified as from a file identified as California Group 11.

The various documents are tabbed on the left-hand border by numbers running from 1 to 21. The tabbing is done in my office and is not a part of the certificate.

(The file referred to was marked Government's Exhibit No. 12 for identification.)

The Court: Which ones do you want to put in evidence?

Mr. Critchlow: I want to offer the document which is tabbed No. 1. That is a letter under date of March 25, 1912, addressed to the Commissioner of the General Land Office and signed by W. S. Kingsbury, State Surveyor General.

The Court: 12-A in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 12-A.)

Tab. 1.

GOVERNMENT'S EXHIBIT No. 12-A

State of California

Cal. files.

Ans'd Apr 15/12

Office of  
Surveyor-General  
and  
Register State Land Office

Sacramento, March 25, 1912.

Inquiry regarding Cert. Survey

Honorable Commissioner of the General Land  
Office, Washington, D. C.

Dear Sir:—

T. 29 S., R. 20 E., M. D. M., was surveyed in 1869 by John Reed and the plat thereof was approved April 27, 1869.

April 15, 1872 the Register of the United States Land Office at Visalia certified that the plat of said township had been on file in his office over ninety days, that the SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  and SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 36, were pre-empted and that the balance of the section was clear.

Upon the approval and the filing of the plat of said township the title to the unencumbered portion of Section 36, as surveyed by Reed, vested in the State of California, and said portion was sold by and patented by the State.

Another survey of T. 29 S., R. 20 E., was made by H. B. Carpenter in 1893 and the plat thereof

was approved November 18, 1893. On said plat are shown the N.E., N.W., and S.W. corners of Section 36 as set by John Reed in 1869, but said corners were not adopted by Carpenter in his survey and portions of said Section 36, the title to which vested in the State under the Reed survey are now, according to the Carpenter survey, parts of Sections 25, 26 and 35, and the identity of Section 36 as surveyed by Reed and to which the State claims title, has been destroyed.

Will you kindly advise this office why the identity of Section 36 as surveyed by Reed was not preserved when the Carpenter survey was made and what your department will do to perfect the State's title to Section 36 as surveyed in 1869?

Yours respectfully,

/s/ W. S. KINGSBURY,

State Surveyor General.

Received in evidence April 26, 1948.

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Mr. Critchlow: The document tabbed as No. 2, which is a letter dated April 15, 1912, addressed to W. S. Kingsbury from the General Land Office.

The Court: 12-B.

(The document referred to was received in evidence and marked Government's Exhibit No. 12-B.)



Tab. 2.

GOVERNMENT'S EXHIBIT No. 12-B

In Reply Please Refer to 224632 "E" W.T.P.  
W.T.P.

Department of the Interior  
General Land Office  
Washington

April 15, 1912.

Surveys in T. 29 S., R. 20 E., M.D.M., California.

Mr. W. S. Kingsbury,  
State Surveyor General,  
Sacramento, California.

Sir:

In your letter dated March 25, 1912, you call attention to the surveys in T. 29 S., R. 20 E., M.D.M., and request information on certain phases relating to the legal status of the State's claim to sec. 36 of said township.

The records of this office show that the said township was subdivided in 1869 and the plat was approved April 27, 1869. From your letter it appears that on April 15, 1872, the Register of the U. S. Land Office at Visalia certified that the plat of said township had been on file in his office over ninety days and that the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SW $\frac{1}{4}$  of sec. 36 were preempted and that the balance of the section was clear.

The records here confirm the preemption entry described and indicates that the plat was filed in the local office May 28, 1869.

The lands in said township were open to disposal from that date until November 30, 1892, when the same were suspended from all disposals, in view of the resurveys authorized by letter "E" dated November 29, 1892, addressed to the U. S. Surveyor General, setting forth the conclusions relative to the survey of said township by John Reed, in 1869, as developed by a final examination as follows:

"I am of the opinion that a resurvey should not be made on the lines of the fraudulent Reed survey, neither should the hiatus between the Reed and Freeman lines be embraced in an additional survey. From a full and careful consideration of the case, I conclude that the only proper remedy is a complete resurvey of the township based upon the surveys of Freeman and others made prior to the Reed survey.

You are therefore hereby authorized to enter into contract for a resurvey of those portions of the exterior lines and the entire subdivisional survey of T. 29 S., R. 20 E., M.D.M., purported to have been made by Deputy Surveyor, John Reed, said resurveys to be based upon the prior exterior surveys made by Deputy James E. Freeman, A. W. Von Schmidt, C. D. Gibbs and B. M. Henry. The surveys returned by Deputy Reed having been shown by the investigation made by Mr. Fawcner to be fictitious and fraudulent in character should not only be wholly ignored in the extension of the lines of the resurvey but all corners established by said Reed should be obliterated."

This action was followed by a resurvey in accord-

ance with instructions from the U. S. Surveyor General, in which the deputy surveyor, after being directed to proceed with a new survey of the township disregarding the Reed corners, was instructed to obliterate the Reed corners, but to carefully locate improvements or well defined claims of settlers indicated by fences or monuments in order that they might be shown upon the new plat of the township as a basis of adjustment, after ascertaining the relation of Reed's corners to the new survey by bearing and distance. These instructions appear to have been observed by the deputy including the locations of the NE, NW and SW corners of Reed's survey of sec. 36, incidental only, however, to the locations of certain claims in adjacent sections 25, 26 and 35; he appears not to have been impressed with the fact either that a patent had been issued for 160 acres under a preemption entry in sec. 36 or that any necessity existed for the observance of the fact that the title of the remaining 480 acres had vested in the State under the school land law. He seems to have found a number of corners based upon certain approved State Selections in secs. 25, 26 and 35, as well as a preemption entry patented in 1889 in sec. 35. The corners of certain unapproved State Selections were also noted, but there appears to have been no impression made of the necessity or advisability of his preserving and recognizing the identity of sec. 36 as surveyed by Reed. The only conclusion at which this office can now arrive is that in 1893 when the plat of resurvey was constructed, a section



36 was shown thereon by the new survey and that it was assumed that the State would adjust its claim thereto.

Without attempting at this time to determine the question presented by you as to what the Department will do to perfect the State's title to section 36 as surveyed in 1869, these facts are placed before you for such further action as the State may wish to take in the matter.

Very respectfully,

/s/ [Indistinguishable]

Commissioner.

4-13 F/S

Received in evidence April 26, 1948.

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Mr. Critchlow: The next item is tab No. 3, which is a letter dated May 7, 1912, addressed to the Honorable Commissioner of the General Land Office, signed by W. S. Kingsbury, State Surveyor General and Ex-officio Registrar of the State Land Office.

The Court: 12-C.

(The document referred to was received in evidence and marked Government's Exhibit No. 12-C.)





all communications to  
V. S. KINGSBURY  
Surveyor General

State of California

*Recd May 17/12  
to Mr. Guel. Ad.*

OFFICE OF  
**SURVEYOR-GENERAL**

AND  
REGISTER STATE LAND OFFICE

*Sacramento, May 7, 1912.*

A. W. SANBORN DEPUTY	
Received G.L.O. MAY 14 1912	224632
Referred to	
Advised	
Approved	

*224132.  
10*

Honorable Commissionner of the General Land Office,

Washington, D. C.

*ref. plat of resurvey of*

Dear Sir:-

Referring to your favor 224632 "E#W.T.P. of April 15, 1912, concerning Section 36, T. 29 S., R. 20 E., M.D.M., the State of California respectfully requests you to construct a township plat and delineate thereon Section 36 as surveyed by John Reed in 1869, being the land the title to which vested in the State of California upon approval of said survey, which title the State disposed of through patents issued under the laws of the State.

This office is not advised by the General Land Office when a township is surveyed or resurveyed, therefore, when a resurvey is made, in some instances many years elapse before the State discovers that a new survey of a township has been made, which in this case, is the reason for this belated request to show the locus of said Section 36, as surveyed in 1869. The State cannot adjust its claim to a school section located by a resurvey, in a position different from the one originally established, to which the State's title vested.

Yours respectfully,

*C. S. Kingsbury*  
State Surveyor General and ex officio Register of State Land Office.



Mr. Critchlow: The next is the item tabbed in this file as No. 5, which is a letter dated May 17, 1912, addressed to Mr. W. S. Kingsbury, State Surveyor General, Sacramento, California, signed by S. V. Proudfit, Commissioner.

The Court: That will be 12-D.

(The document referred to was received in evidence and marked Government's Exhibit No. 12-D.)

Tab 5.

GOVERNMENT'S EXHIBIT No. 12-D

In Reply Please Refer to "E" 224632 W.T.P.  
W.T.P.

Department of the Interior

General Land Office

Washington, May 17, 1912.

Surveys in T. 29 S., R. 20 E., M.D.M., California.

Mr. W. S. Kingsbury,  
State Surveyor General,  
Sacramento, California.

Sir:

I am in receipt of your letter dated May 7, 1912, requesting the construction of a township plat showing sec. 36, T. 29 S., R. 20 E., M.D.M., California, as surveyed by John Reed in 1869, the same being the land the title to which vested in the State of California upon approval of said survey, which title, it is said, the State disposed of through patents issued under the laws thereof.

In reply, you are advised that as stated in letter

“E” to you dated April 15, 1912, the deputy surveyor in the resurvey of 1893, located the N.E., N.W. and S.W. corners of deputy Reed’s survey of sec. 36, incidental only, however, to the location of certain claims in secs. 25, 26 and 35. He appears not to have located the southeast corner of said sec. 36 and before a plat can be constructed which will show sec. 36 as originally surveyed, said southeast corner must be located and marked upon the ground and the boundaries of the resurveyed section defined with reference to the surrounding lands.

Instructions for such survey will be prepared by the U. S. Surveyor General, San Francisco, California, to whom the matter has been referred.

Very respectfully,

/s/ S. V. PROUDFIT,

Commissioner.

5-15 FAS

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Mr. Critchlow: The next item tabbed in the file is No. 6, which is a copy—may I speak to counsel for just a moment?

The Court: Surely.

(Conference between counsel.)

Mr. Critchlow: Apparently it is a copy of the draft of the instructions of Deputy Surveyor Wilkes with reference to a segregation survey of the area which we are concerned with in this case. It bears the date September 10, 1912, but the name of the surveyor to whom they are addressed doesn’t appear



in this document. They are, however, signed by E. H. Archer, United States Surveyor General for California.

Mr. Clark: I think as a matter of record that I ought to object to the introduction of anything that relates to a survey subsequent to the Carpenter survey of the area that is involved in this litigation, on the ground that there was no authority in the Government to have such survey made for the purpose of intermeddling with any prior approved survey or intermeddling with anybody's title. I think the cases are uniform on that. It would be irrelevant and incompetent here also.

I have no objection to the material being introduced and being placed in the record, subject to that objection. I just want it clear that it shan't be used for the purpose of showing that there was any change in the Carpenter survey.

The Court: Your point is that there is no foundation?

Mr. Clark: No. What happened was this——

The Court: Then your objection goes rather to the effect of it than to its admissibility?

Mr. Clark: That is right.

The Court: Very well. It will be admitted.

Mr. Clark: It wouldn't be competent for the purpose of changing what had already happened. All either one of us wants it for is to illustrate what had happened.

The Court: It is in evidence. I understand your objection goes to the effect of it.

Mr. Clark: That is right, to its legal effect.

The Clerk: That is Government's Exhibit 12-E.

(The document referred to was received in evidence and marked Government's Exhibit No. 12-E.)

Tab 6.

GOVERNMENT'S EXHIBIT No. 12-E

Group II

Department of the Interior,  
Office of the U. S. Surveyor General  
San Francisco, California,

J.M.W.

Sept. 10, 1912.

.....

U. S. Surveyor,

Sir:

John Reed, under his contract dated February 4, 1869, subdivided T. 29 S. R. 20 E., M.D.M., California, the plat of which was approved April 27, 1869, and filed in the Visalia Land Office May 28, 1869, but on November 30, 1892, said survey was suspended. Prior to said suspension a number of entries were made and lands patented according to the Reed survey.

H. B. Carpenter, under his contract dated December 28, 1892, resurveyed the above township and located all patented lands relative to said survey; he failed to survey out, by metes and bounds, original section 36 of said township, but did show and locate the NW, N.E. and S.W. and probably the

## Government's Exhibit No. 12-E—(Continued)

West quarter section corners, as established by Deputy Reed. All of the land in said section 36 belonged to the state of California and was disposed of through patents issued under the laws thereof, according to the Reed survey.

You are therefore directed to make a supplemental survey of original section 36, T. 29 S. R. 20 E., as surveyed by Deputy Reed in 1869, which will re-locate the three corners reported by deputy Carpenter in 1893 and in addition the Southeast corner of said section as established by Reed.

If all evidences of the original South East corner have disappeared, it may be restored by reference to the evidences which existed in 1893 as to its being at the intersection of two lines run from the N.E. and S.W. corners, the former on a course South  $1^{\circ} 16'$  W. and the latter, South  $88^{\circ} 44'$  E. which seems to have been the courses of Reed's lines reported by deputy Carpenter.

Begin your supplemental survey at Reed's old corner of secs. 1, 2, 35 and 36 reported by deputy Carpenter to be West 14.01 chains from a point on the line between secs. 35 and 36 N.  $0^{\circ} 47'$  W. 34.00 chs. distant from the cor. of secs 35 and 36, on South boundary of township.

Thence run North  $1^{\circ} 16'$  E. along the West boundary of original section 36; at 20.00 chs. note falling of the N.E. cor. of Thos. E. Frazier's patented land, being the S $\frac{1}{2}$  SE $\frac{1}{4}$  sec. 35 (Reed survey). Should the cor be missing, set temporary cor. In the same



Government's Exhibit No. 12-E—(Continued)  
manner note falling from the N.E. cor. of E. M. Crocker's tract, being the N.E. $\frac{1}{4}$  SE $\frac{1}{4}$  sec. 35 (or  $\frac{1}{4}$  sec. cor. between secs. 35 and 36 (Reed's survey).

At 80.00 chs. set temp.  $\frac{1}{4}$  $\frac{1}{4}$  sec. cor. for the N.W. cor. of SW $\frac{1}{4}$  NW $\frac{1}{4}$  sec. 36. Continue on random line to Reed's old corner of 25, 26, 35 and 36, which cor. Is reported by Deputy Carpenter to be N.88° 44' W. 11.13 chs. from a point on line between secs 25 and 26, N. 0°47' W. 34.26 chs. from the cor. of secs. 25, 26, 35 and 36 (Carpenter resurvey). If you find the  $\frac{1}{4}$  sec. cor. and the two  $\frac{1}{4}$   $\frac{1}{4}$  cors. on your random line, return on a true line, giving course and distance between consecutive corners, so found. Should you fail to find part or all of the above corners re-establish the missing corners at proportionate distances.

In the same manner, you will retrace or resurvey the North boundary of original sec. 36 between the N.W. and N.E. corners thereof by first running a random line from the N.W. cor. to the N.E. cor. which cor is reported by Deputy Carpenter to be N. 88° 44' W. 6.13 chs. from a point on West boundary of T. 29 S. R. 21 E., S. 0° 47' E. 64.94 chs. from the cor. of secs. 19 and 30. Thence Westerly on a true line re-establishing the two  $\frac{1}{4}$   $\frac{1}{4}$  sec. and  $\frac{1}{4}$  sec. cors, if lost or obliterated, at proportionate distances.

From Reed's old cor. of secs. 25, 30, 31 and 36 run S. 1° 16' W on a random line on the East boundary of sec. 36, (Reed's survey), also the West



## Government's Exhibit No. 12-E—(Continued)

boundary of A. N. Foster's tract, the S.W. cor. of which is reported by Carpenter to be N.  $88^{\circ} 44'$  W., 6.83 chs. from a point on the West boundary of T. 29 S. R. 21 E., at S.  $0^{\circ} 47'$  E., 4.94 chs. from the cor. of secs. 30 and 31; thence continue on random to the S.W. cor. of C. C. Bishop's tract which cor. is reported by Carpenter as being N.  $88^{\circ} 44'$  W. 7.52 chs. from a point on West boundary of T. 29 S., R. 21 E., at  $8.0^{\circ} 47'$  E., 24.94 chs. from the cor. of secs. 30 and 31.

This cor. is the East  $\frac{1}{4}$  sec. cor. sec. 36 (Reed's survey) Continue S.  $1^{\circ} 16'$  W. on a random line to the S.E. cor. of sec. 36. Thence back on true line, re-establishing the  $\frac{1}{4}$  and  $\frac{1}{4} \frac{1}{4}$  sec. cors. if missing at proportionate distances. Should you fail to find the S.E. cor. of sec. 36 you will re-establish it at the mutual intersection of the line run S.  $88^{\circ} 44'$  E. from the cor. of secs. 1, 2, 35 and 36 and the line run S.  $1^{\circ} 16'$  W. from the cor. of secs. 25, 30, 31 and 36. Should you find the east  $\frac{1}{4}$  sec. cor. sec. 36, then you will run S.  $1^{\circ} 16'$  W. from that cor. instead of from Reed's old. cor. of secs. 25, 30, 31 and 36.

At said intersection, re-establish the S.E. cor. of original sec. 36.

Re-establish the South  $\frac{1}{4}$  sec. cor. sec. 36 midway between the S.E. and S.W. corners. Establish the  $\frac{1}{4} \frac{1}{4}$  sec. cor., or the S.E. cor. of the  $SW\frac{1}{4}$   $SW\frac{1}{4}$  mid-way between the S.W. cor. and the re-established  $\frac{1}{4}$  sec. cor., sec. 36.

Having re-established the four quarter section

Government's Exhibit No. 12-E—(Continued)  
corners you will subdivide sec. 36 into its component parts, with reference to such of the subdivisional lines as may be necessary to identify the corners of lands patented to Edwin M. Crocker, embracing the SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SW $\frac{1}{4}$ . Subdivision to be made in accordance with sec. 74 et seq. page 21 of circular entitled "Restoration of Lost or Obliterated Corners and Subdivision of Sections" Revision of June 1, 1909.

You will also subdivide the SW $\frac{1}{4}$  and NW $\frac{1}{4}$  into their component parts establishing  $\frac{1}{4}$   $\frac{1}{4}$  sec. cors., indicated on accompanying blue blue print.

At the points of intersection of the South boundary of sec. 36 (Reeds Survey) and the line between sec. 35 and 36 (Carpenter Survey) give bearing and distance to the cor. of sec. 35 and 36 of S. Bdy. of township and the  $\frac{1}{4}$  sec. cor. for same secs. and establish closing cor. thereon. In like manner give intersections for the E.N. and W. boundaries of original sec. 36 with public land lines, as re-surveyed by deputy Carpenter but do not establish closing cors.

Corners will consist of best native stone if obtainable, if not, then use good sound post. Wood of a perishable nature will not be used. Mark and witness by the usual accessories. The interior  $\frac{1}{4}$  and  $\frac{1}{4}$   $\frac{1}{4}$  sec. cors will be set and marked as for  $\frac{1}{4}$  sec. cors. on meridional lines.

Before leaving the field see that all closed figures formed with accepted or retraced boundaries close.

Government's Exhibit No. 12-E—(Continued)  
within limits. This may necessitate a limited re-tracement of the public land lines as re-surveyed by Carpenter.

If at any stage of your work you find the conditions of the old surveys different from those shown on blue print or as described in original field notes, you will report the facts to this office and await further instructions.

Upon completion of the supplemental survey, you will prepare the returns of the survey, which must conform with the requirements of the Manual of 1902, and file the same—in this office.

For your information and guidance, the following data is herewith furnished; viz,

One blue print diagram indicating work to be performed.

Transcript of field notes of the Reed Survey.

Transcript of field notes of the Carpenter re-survey, and

Circular on the "Restoration of Lost or Obliterated Corners and Subdivision of Sections".

Very respectfully,

/s/ E. H. ARCHER,

U. S. Surveyor General  
for California.

Received in evidence April 26, 1948.



The Court: Exhibits 12-A, B, C, D and E, being respectively tabs 1, 2, 3, 5 and 6, are in evidence, and the remainder of Exhibit 12 is marked for identification.

Mr. Critchlow: Now as Exhibit 13 we offer in evidence a certified copy of the field notes of survey by Lincoln E. Wilkes, in so far as they relate to Section 36.

Mr. Clark: No objection, except to its legal effect.

The Court: What is the date of it?

Mr. Critchlow: The survey was commenced January 13, 1914 and completed January 18, 1914. This is the field notes themselves.

The Court: That is sufficient to identify it. There will be the same ruling as Exhibit 12-E.

The Clerk: Government's Exhibit 13 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 13.)

Mr. Critchlow: The next exhibit is a certified copy of the plat of the Wilkes' survey, certified by the United States Surveyor General for California under date of April 7, 1915.

The Court: Same ruling.

The Clerk: Government's Exhibit 14 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 14.)

[Government's Exhibit No. 14 is identical to Ex-



hibit C attached to the Complaint. See page 14 of this printed record.]

Mr. Clark: I might state there, if I may, in your memorandum filed with the Court, a copy of which you sent to me, you gave the impression that the area surveyed in the Wilkes' survey contained 303 acres. If you will add that or put it on an adding machine tape and add the area marked Carpenter on there, on the south and east, you will find that that is the area that contains 303 acres and not the entire square.

What I am trying to say is this, this L-shaped area here adds on the adding machine to 303 acres. Mr. Critchlow's memorandum gave me the impression at any rate that he thought the whole square here contained 303 acres.

The Court: The Wilkes' survey is a survey of only a portion of Section 36?

Mr. Clark: Yes.

Mr. Critchlow: No.

The Court: This is where the Lots 2 to 11 came in?

Mr. Clark: That is right. Wilkes tried to find out what had happened.

Mr. Critchlow: He was directed to segregate the area of Section 36 by Reed, which he did by calling it Tract 89, and then this area was divided into lots numbered 1 to 11. The segregation survey was made at the request of the State of California, as evidenced by the documents Exhibits 12-A, B, C, D and E.

The Court: All this does is assign lot numbers to that area you have marked on the board as Carpenter's?

Mr. Critchlow: That is right. And if you will read the statement up at the side, if your Honor please, this purports to identify it as Tract 69, this area surveyed by Reed as Section 36. In other words, it places that designation, Tract 69, on the area surveyed by Reed in 1869.

Mr. Clark: I am inclined to dispute that. I don't think it refers to the whole of Reed's survey as Tract 69.

The Court: This does not change anything from the Carpenter survey, does it?

Mr. Clark: It cannot.

The Court: It does not purport to except to draw some lines. Instead of an unidentified piece of ground, so many chains and rods and the like in this direction and that direction from the points of the compass, it is Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

Mr. Critchlow: I don't quite agree with that, if your Honor please, because while the Carpenter survey identified the location of this corner, that is, the southwest corner, northwest corner and northeast corner of Reed's Section 36, the Carpenter survey did not identify the location of the southeast corner.

The Court: As far as the Carpenter survey is concerned, the southeast corner is way down there in the southwest corner of Carpenter's, as far as this plat is concerned.

Mr. Critchlow: I don't quite agree with that.

The Court: As far as it appears on the face of this document.

Mr. Critchlow: It doesn't show the south line of the section, Reed's Section 36, nor does it show a part of the east line.

Now the correspondence which has been offered under Exhibits 12-A, 12-B and 12-C show the reason for the Wilkes' survey, which was to show on a plat this area and described as such. That was the reason for it. That is what was done.

The Court: Very well. Exhibit 14 is in evidence, subject to the same objection and same ruling as was made to 12-E.

(The document referred to was received in evidence and marked Government's Exhibit No. 14.)

Mr. Critchlow: Now, if your Honor please, we are going into the Jordan situation. I will ask to be marked for identification a certified copy of a petition for writ of mandamus in the case of Jordan v. Kingsbury as Surveyor General, entitled In the Superior Court of the State of California, in and for the City and County of San Francisco——

Mr. Clark: I can shorten that for you. I have a transcript of the appeal in that case.

Mr. Critchlow: I don't care about the testimony.

Mr. Clark: There is only one part of the testimony that I would want in the case.

The Court: Have you seen that, Mr. Critchlow?

Mr. Critchlow: No.



The Court: Why do you not look at it?

Mr. Critchlow: Very well.

The Court: You look at it and we will have a recess.

(Short recess.)

Mr. Critchlow: I have in my hand a copy of a transcript entitled In the District Court of Appeals of the State of California, in and for the First Appellate District, in the Case of J. H. Jordan v. W. S. Kingsbury, as Surveyor General and Registrar of the State Land Office of the State of California, and is denominated Transcript on Appeal. May that be marked as Exhibit 16.

The Clerk: Government's Exhibit No. 16 in evidence.

Mr. Critchlow: Just a minute. I do not offer the whole document.

The Court: It will be No. 16 for identification and then you can mark it 16-A, B and C.

(The document referred to was marked Government's Exhibit No. 16 for identification.)

The Court: 16-A will be what, the petition?

Mr. Critchlow: The petition for the writ of mandamus, filed in the Superior Court, beginning on page 3.

(The document referred to was received in evidence and marked Government's Exhibit No. 16-A.)



GOVERNMENT'S EXHIBIT NO. 16-A

In the Supreme Court of the State of California  
Transcript on Appeal

In the Superior Court of the State of California, in  
and for the City and County of San Francisco.

J. H. JORDAN,

Petitioner,

vs.

W. S. KINGSBURY, as Surveyor General and  
Register of the State Land Office of the State  
of California,

Respondent.

Complaint

The petition of the above named petitioner, J. H. Jordan, to the Honorable the Superior Court of the State of California in and for the City and County of San Francisco, sheweth:

I.

That your petitioner is, and at all times hereinafter mentioned was, a citizen of the United States of America, and of the State of California, and over the age of twenty-one (21) years.

II.

That the respondent is, and at all the times hereinafter referred to was, the Surveyor General and Register of the State Land Office of the State of California.

## Government's Exhibit No. 16-A—(Continued)

## III.

That on the 22nd day of March, 1912, at the office of respondent in the Capitol Building, in the City of Sacramento, and State of California, your petitioner did present to respondent, as such Surveyor General and Register of the State Land Office, for filing, a written application for the purchase of the school lands in said application described, that is to say, for the following described land in Kern County, to wit:

The South one-half ( $\frac{1}{2}$ ) and the Northeast one-quarter ( $\frac{1}{4}$ ) of Section Thirty-six (36), Township Twenty-nine (29) South, of Range Twenty (20) East, Mount Diablo Meridian, according to the official survey thereof made by U. S. Deputy Surveyor Carpenter, approved November 18, 1893, containing Four hundred and eighty (480) acres;

that said application was accompanied by the affidavit of petitioner to the effect that he was a citizen of the United States, a resident of this State of legal age, that he desired to purchase the said lands (describing them by legal subdivisions as hereinabove set forth) under the provisions of title eight of the Political Code, for his own use and benefit, and for the use and benefit of no other person whomsoever, and that he had made no contract or agreement to sell the same, and that he did not own any state lands which, together with that then sought to be purchased, exceeded six hundred and

Government's Exhibit No. 16-A—(Continued)  
forty (640) acres, all in due form as prescribed by the laws of the State of California and by respondent.

#### IV.

That at the same time and place, petitioner did likewise present to respondent, as such Surveyor General and Register of the State Land Office, an affidavit by J. B. Batz and V. S. Batz, both of whom were, at all times herein referred to, and still are, citizens of the United States of America, and of the State of California, wherein each did depose and say that he was well acquainted with the said lands, and with each and every legal subdivision thereof; that said lands were not timbered lands; that there was not as much as one-half of any legal subdivision thereof that would produce ordinary agricultural crops in average quantities, by the ordinary processes of tillage, with or without the clearing of timber or other growth therefrom, or without artificial irrigation, and that said lands were principally adapted to grazing purposes, all in due form as prescribed by the laws of the State of California and by respondent.

#### V.

That at the same time and place, petitioner did likewise deliver to respondent the sum of Twenty-five (25) Dollars, in Gold Coin of the United States, in payment of the filing fee for filing said application, and of the deposit of Twenty (20) Dollars required by law.



## Government's Exhibit No. 16-A—(Continued)

## VI.

That two surveys of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., were made under the authority of the United States Government; that the first of said surveys was made by one John Reed, a United States Deputy Surveyor, prior to the 27th day of April, 1869, and that the said survey was duly approved by the United States Surveyor General and accepted by the Commissioner of the General Land Office, and a copy of the plat thereof filed in the office of the Register and Receiver of the Land District in which the said lands were situated, on or about the 27th day of April, 1869; that thereupon the said lands contained within said Section Thirty-six (36) did pass to and vest in the State of California as school lands, under the grant of Congress of the Sixteenth and Thirty-sixth sections in each township; that thereafter, as claimed by respondent, and as your petitioner is informed and believes, and according to his information and belief alleges, all of said Section Thirty-six (36), according to said Reed Survey, to which said State of California became entitled under the Act of March 3, 1853, was disposed of by the State of California.

## VII.

That thereafter a second survey of said section was made by one H. B. Carpenter, a United States



## Government's Exhibit No. 16-A—(Continued)

Deputy Surveyor, prior to the 18th day of November, 1893, and that the said survey was thereafter duly approved by the United States Surveyor General, and accepted by the Commissioner of the General Land Office, on or about the 18th day of November, 1893, and a copy of the plat thereof was thereupon filed in the office of the Register and Receiver of the Land District in which the lands contained within said survey were situated.

## VIII.

That the said section, as surveyed by said Carpenter, which said survey is hereinafter referred to as the Carpenter Survey, did not conform with the Reed Survey; that the said Reed Survey, instead of being bounded on the South and East lines thereof by the South and East lines of the township were at some distance therefrom within said township, and that the South and East lines of said section, as surveyed by said Carpenter, were identical, so far as they extended, with the South and East lines of said township; that by reason of the conflict between said surveys, the second of said surveys, to wit: the said Carpenter Survey, contains certain lands which lie without the boundaries of said Reed Survey, and that the said lands so contained within the said Carpenter Survey, and lying outside of the boundary lines of said Reed Survey, did, by virtue of said Carpenter Survey, immediately pass to and vest in the State of Cali-

Government's Exhibit No. 16-A—(Continued)  
fornia, as school lands under the grant of Congress of the Sixteenth and Thirty-sixth sections in each township, and that the said lands are contained within the said application of the petitioner herein.

### IX.

That respondent did, on said 22nd day of March, 1912, file said application for the said lands, constituting the fractional Northeast one-quarter ( $\frac{1}{4}$ ) and South one-half ( $\frac{1}{2}$ ) of said Section Thirty-six (36), as shown upon the township plat thereof approved November 18, 1893, and hereinabove referred to as the Carpenter Survey.

### X.

That thereafter, and during the six (6) months next succeeding the filing of said application, your petitioner did appear before respondent at the time and place fixed by him, pursuant to section 3498, and did answer under oath such interrogatories as were put to him regarding his application and the truth of the same, and the facts and circumstances connected therewith, all as required by the laws of the State of California and by said respondent.

### XI.

That said respondent has declined to approve the said application, upon the sole ground that "it does not appear to me" (him) "that the land is subject to sale", and that the said conclusion is based upon a doubt upon the part of respondent as to whether said lands did in fact pass to and vest in the State of California by virtue of said Carpenter Survey.

## Government's Exhibit No. 16-A—(Continued)

## XII.

That the portion of the lands described in the said application not already disposed of by the State are more particularly described as follows, to wit:

Commencing at the Southeast corner of Section Thirty-six (36), Township Twenty-nine (29) South of Range Twenty (20) East, Mount Diablo Base and Meridian, according to the official plat of the survey thereof, made by United States Deputy Surveyor, H. B. Carpenter and approved by the U. S. Surv. Gen., Cal. November 18, 1893; thence North along the East boundary of said Section Thirty-six (36) as established by said survey, to a point formed by the intersection of the South line of Lot Thirty-seven (37) in said Township and range aforesaid with said East line of said Section; thence West Seven and fifty-two hundredths (7.52) chains more or less, along the South line of said Lot Thirty-seven (37) to a point where said South line of said Lot Thirty-seven (37) intersects the East boundary of said Section thirty-six (36) as said East boundary is shown by plat of survey made by U. S. Deputy Surveyor Reed, approved April 27, 1869; thence South along said East line of said Section thirty-six (36) according to survey last herein referred to, to the Southeast corner of said Section thirty-six (36) according to said last mentioned survey; thence West along the South line of said Section thirty-six (36) as said South line was established by said last named survey to a point where



Government's Exhibit No. 16-A—(Continued)

said south line intersects the West line of said Section thirty-six (36) as said West line was established by U. S. Deputy Surveyor Carpenter according to plat approved November 18, 1893, first herein referred to; thence South along said West line of said Section thirty-six (36) to the Southwest corner of said Section as established by last mentioned survey; thence along the south line of said Section thirty-six (36) according to said survey eighty (80) chains to the place of commencement being all of that portion of section thirty-six (36) lying without the exterior bounds of said Section as established by U. S. Deputy Surveyor Reed and lying within the exterior boundaries of said Section thirty-six (36) as established by U. S. Surveyor Carpenter excepting that portion thereof included within the exterior bounds of Lot Thirty-seven (37), reference being hereby made to the official plats of said surveys herein referred to for further particulars.

That the said lands contain 301.38 acres.

Wherefore your petitioner prays:

1. That this Court do issue its writ of mandate commanding respondent, in his official capacity as the Surveyor General and the Register of the State Land Office, to show cause to the Court, at a time to be fixed by the Court for that purpose, why he should not be compelled to approve the application of petitioner hereinabove referred to, and that if respondent shall fail to show cause, then that he be



Government's Exhibit No. 16-A—(Continued)  
compelled by the mandate of this Court to approve  
said application, in his official capacity as Surveyor  
General and Register of the State Land Office of  
the State of California;

2. Such further and other relief as may to the  
Court seem proper;

3. Judgment for costs.

B. M. AIKINS,  
Attorney for Petitioner.

State of California,  
Trinity County—ss.

J. H. Jordan, being first duly sworn, deposes and  
says:

That he is the petitioner in the above entitled  
action; that he has read the foregoing Petition for  
Writ of Mandate, and knows the contents thereof;  
that the same is true of his own knowledge, except  
as to matters which are therein stated on informa-  
tion or belief, and as to those matters that he be-  
lieves it to be true.

J. H. JORDAN.

Subscribed and sworn to before me, this 26th day  
of October, 1912.

[Seal.] H. F. COFFMAN,  
Justice of the Peace in and for Trinity Center  
Township, Trinity Co., Calif.

Received in evidence April 26, 1948.

Mr. Critchlow: Then a copy of the answer commencing on page 15.

The Court: That is the answer of Kingsbury?

Mr. Critchlow: The answer of the defendant Kingsbury.

The Court: That will be 16-B.

Mr. Critchlow: The answer to include Exhibit A attached to the answer and made a part of it, which appears beginning at page 19.

The Court: That will be all of the answer with the exhibits?

Mr. Critchlow: That is correct.

The Clerk: Government's 16-B.

(The document referred to was received in evidence and marked Government's Exhibit No. 16-B.)

#### GOVERNMENT'S EXHIBIT No. 16-B

[Title of Court and Cause.]

#### ANSWER

Comes now the above-named respondent, and without waiving his demurrer this day served and filed, but expressly insisting upon the same, answers petitioner's petition or complaint herein, and admits, denies and avers as follows:

#### I.

Respondent admits that petitioner's application, referred to in the complaint, was filed in the office of the Surveyor General of the State of California. Respondent avers that thereafter, on to wit, the 1st day of October, 1912, the said application came on

Government's Exhibit No. 16-B—(Continued)  
regularly for hearing under and pursuant to the provisions of section 3498 of the Political Code; that after a full hearing and examination the application of said Judson H. Jordan for the lands in the complaint described was disapproved and disallowed by said Surveyor General; that a copy of the judgment and order of said Surveyor General so disallowing and disapproving said application is hereunto attached marked Exhibit A and made a part hereof.

## II.

Admits that two surveys of Township 29 South, Range 20 East, M. D. M., were made under the authority of the United States government but in this connection respondent avers the fact to be that said township and range was duly and regularly surveyed by survey made prior to the 27th day of April, 1869, under the authority of the United States and approved on said last mentioned date and that by said survey the school sections in said township granted to the State by the Act of Congress of March 3rd, 1853, were created and established and the title thereto passed to and vested in the State of California; that by said survey the quantity of land in said township to which the State was entitled under said Act of Congress was fixed and determined and likewise, by said survey the said school sections were established and created and the location of the same and the boundary lines thereof were definitely fixed, created and established. That prior to the filing of the application of the plaintiff



Government's Exhibit No. 16-B—(Continued)  
herein and prior to the survey of 1893 referred to in the complaint herein the State of California sold and disposed of all the lands to which it was entitled in said township and closed and settled its account with the government so far as said township 29 is concerned.

Denies that the lands contained within the Carpenter Survey as set forth in the petition herein and lying outside of the boundary lines of the Reed Survey referred to in the petition herein did by virtue of said Carpenter Survey immediately or at all pass to or vest in the State of California as school lands under the grant of Congress of the 16th and 36th sections in each township, or otherwise or at all but on the contrary said respondent avers that said lands are not the lands of the State of California.

### III.

Denies that respondent has declined to approve the application of petitioner herein upon the sole ground that it does not appear to him that the land is subject to sale but on the other hand respondent avers that as hereinbefore set forth he has determined and adjudged that said lands do not belong to the State of California and has heretofore made an order disapproving said application of said plaintiff, a copy of which said order is hereunto annexed and marked Exhibit A and by reference thereto made a part of this paragraph of respondent's answer, likewise, respondent denies that the said



Government's Exhibit No. 16-B—(Continued)  
conclusion or any conclusion is based upon a doubt upon his part as to whether said lands did in fact pass to and vest in the State of California by virtue of the Carpenter Survey referred to in the petition herein and in this connection respondent avers that the application of petitioner herein was disapproved by respondent in the regular course of administration of the office of respondent and under and pursuant to Section 3498 of the Political Code of the State of California, all of which will more fully appear from the said order hereunto attached and hereinbefore referred to.

#### IV.

Respondent has no information or belief upon the subject sufficient to enable him to answer and therefore denies that the portion of the lands described in the said application not already disposed of by the State are more particularly described as set forth in paragraph twelve of the petition herein.

Wherefore respondent prays that petitioner take nothing by this proceeding, that the same be dismissed and that he recover his costs herein.

U. S. WEBB,

Attorney General, and

MALCOLM C. GLENN,

Deputy Attorney General, Attorneys for said Respondent.

Government's Exhibit No. 16-B—(Continued)

EXHIBIT A

Office of the State Surveyor General and Ex Officio  
Register of the State Land Office of the State  
of California.

Sacramento, California, October 1, 1912

The application of Judson H. Jordan to purchase the South  $\frac{1}{2}$ , and the Northeast  $\frac{1}{4}$  of Section 36, Township 29 South, Range 20 East, M. D. M., which said application was filed in the office of the Surveyor General on the 22nd day of March, 1912, having come on regularly for hearing on September 23, 1912, under and pursuant to section 3498 of the Political Code as amended by an Act of the Legislature of the State of California approved March 13th, 1911 (Statutes 1911 page 1409) and notice of the said hearing having been regularly given as in said section provided, and said applicant having appeared in person before a Deputy Surveyor General and having been then and there regularly examined under oath; and after full hearing and examination it is by said Surveyor General determined, found and adjudged:

That the lands applied for by said applicant did not at the time of the presentation and filing of said application and do not now nor does any part thereof belong to the State of California, and have never been subject to sale and are not now subject to sale; the said lands applied for and described in the application as the South  $\frac{1}{2}$  and the Northeast  $\frac{1}{4}$  of Section 36 Township 29 South, Range 20 East

## Government's Exhibit No. 16-B—(Continued)

M. D. M. according to the official survey thereof made by the United States Deputy Surveyor Carpenter, approved November 18th, 1893, and containing 480 acres are not a part of school section No. 36 in said township and range aforesaid which was granted to the State of California by Act of March 3, 1853; that long prior to the filing of the plaintiff's application herein and prior to the said survey approved November 18, 1893, the State of California sold and disposed of all its school lands situated in said township 29 South, Range 20 E., M. D. and M; that under the act of March 3rd, 1853, the Congress of United States granted to the State of California Section 16 and 36 in each township; that said grant was a grant by townships and while such grant was one in praesenti yet as the same must necessarily have remained uncertain until actual survey for the purpose of determining the exact location of such sections title thereto did not pass to the state until the approval of the survey of the various townships; that as shown by the records of the State Land Office township 29 South of Range 20 E., M. D. M. was surveyed by authority of the government of the United States prior to the 27th day of April 1869 and on said last mentioned date the said survey was duly approved by the United States Surveyor General; that by said survey and the approval thereof the quantity of said land in said township to which the State was entitled under said Act of March 3rd, 1853 was determined and likewise the position of each of said



Government's Exhibit No. 16-B—(Continued)

school sections was located and the title to these two sections of land as created and established by said survey passed to and vested in the State of California; that likewise, the boundary lines of said sections were fixed and established; that acting upon and in accordance with the said survey as made and approved in the year 1869 aforesaid, the State of California, prior to the said survey of 1893 sold and disposed of all of said sections 16 and 36 in said township and issued its patents therefor. That the said survey of 1893 changes the boundary lines of said section 36 as established and created by said survey of 1869; that a large portion of land contained in said section 36 as established and created by said survey of 1869 is not included within the boundaries of the land designated as section 36 by the survey of 1893, and likewise, by said latter survey a considerable portion of land to the east and south of the east and south boundary lines of said section 36 as established by said survey of 1869 (and being the land described in the application of said Jordan) is included within the boundary lines of the land designated as section 36 by the survey of 1893. That said land while designated section 36 is not the section 36 which passed to the State of California under the said Act of March 3, 1853; that the said section 36 which passed to the said State under said act does not include any of the land described in said applicant's application; that said land belongs to the government of the United States; that great confusion has

Government's Exhibit No. 16-B—(Continued)

arisen by reason of said improper designation and by reason of said re-survey of 1893 and that if the application of said Jordan be approved the same would amount to a recognition by the State as to the boundary lines constituting school section 36 in said township which would conflict with the boundary line of the school section—said section 36 sold by said State and many acres of land which the said State has heretofore sold as being within section 36 would be excluded therefrom and the title of the State's grantees clouded;

For the foregoing reasons the application of said Judson H. Jordan for the land therein described is hereby disapproved.

[Answer duly verified, served and filed.]

Received in evidence April 26, 1948.

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Mr. Critchlow: Then the copy of the findings and conclusions of law beginning at page 23.

The Court: That will be 16-C.

(The document referred to was received in evidence and marked Government's Exhibit No. 16-C.)

Mr. Critchlow: And a copy of the judgment beginning at page 37.

The Court: 16-D.

(The document referred to was received in evidence and marked Government's Exhibit No. 16-D.)

## GOVERNMENT'S EXHIBIT No. 16-D

[Title of Court and Cause.]

## Judgment

This action having on the 15th day of November, 1912, regularly come on to be tried by the Court, B. M. Aikins, Esq., appearing as attorney for petitioner, and Malcolm C. Glenn, Esq., Deputy Attorney General, appearing as attorney for the respondent, and evidence having been introduced and the cause having been argued by counsel, and having been submitted to the Court for its decision; and the Court having filed its decision that the lands contained within Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., as surveyed by United States Deputy Surveyor Carpenter, and lying outside of the boundary lines of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., as surveyed by United States Deputy Surveyor Reed, did, by virtue of said Carpenter survey pass to and vest in the State of California as school lands, under the grant of Congress of the 16th and 36th sections in each township; and that the petitioner is entitled to a peremptory writ of mandamus, commanding respondent, in his official capacity as Surveyor General and Register of the State Land Office of the State of California, to approve the application of petitioner for that portion of the Northeast one-quarter ( $\frac{1}{4}$ ) and South one-half



( $\frac{1}{2}$ ) of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., according to the survey thereof approved November 18, 1893, which lies without the boundaries of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., according to the survey thereof approved April 27, 1869, which said land is also described as constituting the fractional Northeast one-quarter ( $\frac{1}{4}$ ) and South one-half ( $\frac{1}{2}$ ) of said Section Thirty-six (36), according to the township plat thereof approved November 18, 1893; and that petitioner is further entitled to a judgment against respondent for the costs of suit herein; and having ordered judgment to be entered accordingly;

Now, therefore, it is ordered, adjudged and decreed that the lands contained within said Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., as surveyed by United States Deputy Surveyor Carpenter, and lying outside of the boundary lines of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., as surveyed by United States Deputy Surveyor Reed, did, by virtue of said Carpenter survey, pass to and vest in the State of California as school lands, under the grant of Congress of the 16th and 36th sections in each township; and

It is further ordered, adjudged and decreed, that a peremptory writ of mandamus do issue herein, commanding respondent, in his official capacity as

Surveyor General and Register of the State Land Office of the State of California, to approve the application of petitioner for that portion of the Northeast one-quarter ( $\frac{1}{4}$ ) and South one-half ( $\frac{1}{2}$ ) of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., according to the survey thereof approved November 18, 1893, which lies without the boundaries of Section Thirty-six (36), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., according to the survey thereof approved April 27, 1869, which said land is also described as constituting the fractional Northeast one-quarter ( $\frac{1}{4}$ ) and South one-half ( $\frac{1}{2}$ ) of said Section Thirty-six (36), according to the township plat thereof approved November 18, 1893; and that petitioner have and recover from respondent herein his costs of suit, taxed at (                      ) Dollars.

February 26th, 1913.

J. M. SEAWELL,  
Judge.

Received in evidence April 26, 1948.

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Mr. Critchlow: I offer as plaintiff's Exhibit 17 a certified copy of a patent from the State of California to Judson H. Jordan and signed by Hiram W. Johnson, Governor of the State of California, and attested to by Frank C. Jordan, Secretary of State.

The Court: And the date?

Mr. Critchlow: Dated November 19, 1915, which

purports to convey that portion of the northeast quarter and the south half of Section 36, Township 29 South, Range 20 East, Mount Diablo Meridian, according to the survey thereof approved November 18, 1893, which lies without the boundaries of Section 36, Township 29 South, Range 20 East, Mount Diablo Meridian, according to the survey thereof approved April 27, 1869.

The Clerk: Government's Exhibit No. 17 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 17.)

## GOVERNMENT'S EXHIBIT No. 17

United States of America

State of California

To All Whom These Presents Shall Come, Greeting:

Whereas, Under the provisions of an Act of the Congress of the United States, entitled "An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," approved March third, eighteen hundred and fifty-three, there was granted to the State of California, ten sections of land for the erection of public buildings, seventy-two sections for a seminary of learning, and the sixteenth and thirty-sixth sections of each township in said State and lands selected in lieu thereof under the provisions of said Act and also under



the provisions of subsequent Acts of said Congress of the United States; and whereas, the Legislature of the State of California has provided for the sale and conveyance of said lands by statutes enacted from time to time; and whereas, it appears by the certificate of the Register of the State Land Office, No. 14366, issued in accordance with the provisions of law, bearing date the 18th day of November, 1915, that the tracts of land hereinafter described and being a part of the grant of the sixteenth and thirty-sixth sections and lands in lieu thereof, have been duly and properly located in accordance with law, that the laws in relation thereto have been complied with, that payment in full has been made, and that Judson H. Jordan is entitled to receive a patent therefor;

Now, Therefore, The State of California hereby grants to the said Judson H. Jordan and to his heirs and assigns forever, the said tracts of land located as aforesaid, and which are known and described as follows, to wit:

That portion of the northeast quarter and the south half of Section thirty-six (36), Township twenty-nine (29) south, Range twenty (20) east, Mount Diablo Meridian, according to the survey thereof approved November 18, 1893, which lies without the boundaries of Section thirty-six (36), Township twenty-nine (29) south, Range twenty (20) east, Mount Diablo Meridian, according to the survey thereof approved April 27, 1869; reserving in the people the absolute right to fish thereupon, as

provided by Section 25 of Article 1 of the Constitution of the State of California, containing three hundred one and thirty-eight hundredths (301.38) acres; together with all the privileges and appurtenances thereunto appertaining and belonging. To have and to hold the aforegranted premises to the said Judson H. Jordan and to his heirs and assigns, to his and their use and behoof, forever.

In Testimony Whereof, I, Hiram W. Johnson, Governor of the State of California, have caused these Letters to be made Patent, and the Seal of the State of California to be hereunto affixed. Given under my hand at the City of Sacramento, this, the 19th day of November, in the year of our Lord one thousand nine hundred and fifteen.

HIRAM W. JOHNSON,  
Governor of State.

Attest:

FRANK C. JORDAN,  
Secretary of State.

[Seal] By /s/ FRANK H. CORY,  
Deputy.

Countersigned:

W. S. KINGSBURY,  
Register of State Land Office.

Filed for Record at the Request of J. H. Jordan. this 3 day of Mar., A.D. 1916, at 59 min. past 9 o'clock a.m., and Recorded in Book 17 of Patents, on Page 112, Records of Kern County.

/s/ CHAS. A. LEE,  
County Recorder.

State of California,  
County of Kern—ss.

I, Chas. H. Shomate, County Recorder of said County, do hereby certify that the annexed is a whole, true and correct copy of an original as will appear by reference to Book 17 of Patents, Page 112, now in my office, and that said copy has been compared with original and is a correct transcript therefrom.

Witness my hand and official seal this 19 day of March, A.D. 1947.

CHAS. H. SHOMATE,

Recorder in and for the County of Kern, California.

By /s/ VADA SMITH,  
Deputy.

Received in evidence April 26, 1948.

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Mr. Critchlow: Your Honor please, it is stipulated between the parties to this cause that the defendants in this action deraigned their title by mean conveyances from the State of California through the patent issued to Judson H. Jordan and by said claim dated November 19, 1915, which was issued pursuant to that writ of mandamus in the Jordan v. Kingsbury case.

Mr. Clark: You mean their record title?

Mr. Critchlow: Their record title.

Mr. Clark: So stipulated.

The Court: Very well. The stipulation is approved.



Mr. Clark: If the Court please, I have some items which I would like to offer a stipulation on.

Mr. Critchlow: That concludes the plaintiff's case, your Honor.

The Court: Very well.

Mr. Clark: No. 1, with reference as related to the patent from the State of California to the Jordans, I should like counsel for the Government to stipulate that the certificate of purchase dated December 1, 1914, may be admitted in evidence. I hold a copy of it in my hand.

Mr. Critchlow: No objection.

The Court: Defendants' Exhibit A.

The Clerk: Defendants' Exhibit A in evidence.

(The document referred to was received in evidence and marked Defendants' Exhibit A.)

## DEFENDANTS' EXHIBIT A

Location No. 5238 Certificate of Purchase Visalia  
Land District No. 17874, State Land Office of  
the State of California.

State School Land Grant of 16th and 36th  
Sections

Price per Acre, Two and 50/100 Dollars

Sacramento, 1st Day of December, 1914.

It Appearing from the Report of the County Treasurer,

That on November 19th, 1914, Judson H. Jordan paid to the State of California, the sum of One Hundred sixty and 19/100 (\$160.19) Dollars, being

twenty per cent of the purchase money, and interest on the balance up to January 1st, 1915, in advance, for 301.38 Acres of

State School Land

in the County of Kern, described as follows: that portion of the NE $\frac{1}{4}$  and the S $\frac{1}{2}$  of Section 36 T. 29 S., R. 20 E., M. D. M., according to the survey thereof, approved November 18, 1893, which lies without the boundaries of Section 36, T. 29 S., R. 20 E., M. D. M., according to the survey thereof approved April 27, 1869.

Now, Therefore, be it Known, That the said Judson H. Jordan having made payment of said twenty per cent for the above described tract of land, is the purchaser of the same, and if having in all other respects complied with the requirements of the laws providing for the sale of said lands, and if one year has elapsed since the approval of his application, he shall be entitled to receive a patent for the same upon surrendering this certificate to the State of California.

Amount of Purchase Money unpaid, \$602.76. Interest computed from October 9, 1914, date of ap-

proval of application. Next payment of interest is due Jan. 1st, 1915.

In Witness Whereof, the Register of said Land Office has hereto set his hand and affixed his Seal of Office the day and date above mentioned.

[Seal]

W. S. KINGSBURY,

Register of State Land Office.

Note: Interest is due and payable in advance on the 1st day of January of each year, if the interest is not paid by the 1st day of May following, this certificate shall ipso facto become Null and Void. (See Sec. 3513, P. C.)

Received in evidence April 26, 1948.

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Mr. Clark: Now will you stipulate, Mr. Critchlow, that all taxes levied or assessed upon the land involved in this litigation have been paid by the defendants? I don't know whether that will become relevant or not, but will you so stipulate, subject to your objection as to relevancy?

Mr. Critchlow: I don't require that you make any proof of it. I object on the ground that it is immaterial.

The Court: You are asking for the stipulation that all taxes levied or assessed have been paid by the defendants or their predecessors?

Mr. Clark: Yes. They have all been paid of record, for whatever that may be worth.



The Court: It does not help me much if it is material because that leaves it, if any taxes have been levied or assessed. Have there been taxes levied and assessed?

Mr. Clark: Yes, and they have been paid regularly. They have been paid throughout regularly.

The Court: Since when?

Mr. Clark: That I don't know. It must be since the date of the patent.

The Court: Then is it stipulated that the State has levied and assessed taxes, that is, the State or its appropriate agency, the Court, has levied or assessed taxes upon the land in question since the date of the State patent, November, 1915, which taxes have been paid by the defendants or their predecessors in interest?

Mr. Clark: That is right. I can't tell you the details.

Mr. Critchlow: We don't dispute that fact. We object to it as being immaterial, if your Honor please, not tending to prove or disprove any of the issues in the case.

The Court: Do you stipulate that that is a fact?

Mr. Critchlow: Yes.

The Court: The objection as to its immateriality is overruled at this time.

Mr. Clark: Will the Court indulge me just a moment to consult with counsel?

(Conference between counsel.)

Mr. Clark: I think that is all, your Honor, subject to one suggestion. If it should become neces-

sary, for purposes of explanation or otherwise, to examine into any surveys made prior to 1869, Mr. Critchlow and I have informally agreed that we will have those surveys available for inspection. We have them in our possession now, at least I have, but there is no use encumbering this record with that large volume of material unless it should become necessary to use it.

The Court: Let me see now, the statute from which the statute of 1853 was derived was originally passed in the first or second session of Congress, was it not?

Mr. Clark: Yes.

The Court: It directed surveys.

Mr. Clark: I think the first surveys outside of the eastern states and the New England states were made pursuant to an Act of Congress about 1855 or 1853.

The Court: Outside of the Ohio Territory.

Mr. Clark: Yes, outside of the so-called Western Reserve Territory, in that area.

Mr. Critchlow: There were surveys made as early as——

The Court: There were surveys ordered by the Continental Congress.

Mr. Clark: Yes, but what we call the public lands today.

Mr. Critchlow: Outside of the Northwest Territory.

Mr. Clark: No, not the Northwest Territory, the area around Ohio.

The Court: That was the Ohio Territory.

Mr. Clark: Yes, the Western Reserve.

The Court: Sometimes called the Ohio Territory and sometimes the Northwestern Territory.

Mr. Critchlow: You don't mean by referring to those surveys, any surveys other than surveys immediately surrounding this township, do you?

Mr. Clark: What I have in mind is this: Suppose that at the time we take this case up for final consideration, whenever that may be, the Court should become curious to know how the conflict there originally occurred.

Mr. Critchlow: How there happened to be a hiatus?

Mr. Clark: It may be necessary to explain to the Court. It may be necessary for us to refer to some of the much earlier surveys. I don't think it will be, but if we do have to refer to them we will have them available so the Court can inspect them.

The Court: I understand your position, but what I have in mind is this—and it may be of no consequence—historically the United States have always had public lands, historically after the Declaration of Independence and during the period of the Continental Congress they agreed upon surveys, and historically during that period of time certain of the then states ceded their lands under acts of their own state legislatures to the federation of states, or to the so-called United States, or to the original 13 states, whatever they might call it.



Then follows the Louisiana Purchase in 1815, and the Florida Purchase later, and then there were subsequent acts of Congress directing the surveys there.

Now whether or not any of that is material lies in the fact that the statutes which Congress passed then and passed in the First or Second Session of the Congress and after the adoption of the Constitution are still on the books, with some modifications, and what was done under those, it would seem to me to be material as to what this law means as you are trying to apply it here.

Mr. Clark: That is right. I understand what your Honor has said to me, but I misapprehended the precise application of it at the moment. All of that is covered in these little pamphlets I have here, that is, the sources are given in these pamphlets, *Public Land System of the United States*, edited originally by Commissioner Proudfit. All the references are there and, as a matter of interest, the first one he gives is a reference to an act of the Colonial Congress in 1776 in passing some resolutions.

Then in 1836 there were statutory directions to the General Land Office to make surveys. Now these are the statutes, I take it, that your Honor has in mind.

The Court: No, there are other statutes, statutes which are mentioned here, 1796, 1877, and others, all related to the then public lands.

Now, as I say, it may have absolutely nothing

to do with how this case should be decided, or any issue of law in connection with it, and I do not pretend certainly to be any authority on the history of public lands, but I do have some knowledge about the topic, that it always has been a matter of public consideration of the acts of Congress and it has always been a matter of correcting errors in surveys, and certainly the United States must have established a pattern of interpretation of those statutes and a pattern of dealing with errors in public surveys, so that by long before this there should be no question as to the meaning of the statutes, unless we are to take the Supreme Court's decision in the Tidelands case and disregard everything that the United States has done for the last 150 years.

Mr. Clark: There is such pattern, if the Court please, if I may say so, and I think of one case at the moment, which is as early as 18 Howard, which interprets the general policy laid down by those statutes.

The Court: That is the pattern of the treating of errors in surveys. In other words, whether there were enlargements and increases, and that has been true ever since we have had public lands.

Mr. Critchlow: Or errors in the surveys made.

The Court: It first began because the surveyor generally had a contract and he was afraid to go out and survey the land because it was in Indian territory and the Indians might shoot him, so he surveyed it in his cabin.

Mr. Clark: Mr. Critchlow cited a case of mine which involved the precise facts which your Honor first mentioned. The surveyor didn't want to go into the mountains because there were Indians there so he just took a 40-mile shot with his transit.

Mr. Critchlow: The pattern usually followed by courts is this: When a survey has been made, even though erroneous, and rights are initiated under that survey those rights are sacred. In other words, they can't be disturbed.

The Court: If that is the case, where are you?

Mr. Critchlow: I think that that is the case.

The Court: The question here is what is the survey, is that it?

Mr. Critchlow: Yes. The survey is in Section 36 and the rights are vested in 36.

Now there was a hiatus between this boundary of 36 as established by the Reed survey and the westerly boundaries of some sections which were established in the adjoining township, and a hiatus between the sections which were surveyed down in the township below and the south boundary of this township (indicating on map), leaving a strip of land unsurveyed between those townships.

The Court: Let me ask you this, Mr. Critchlow: Certainly in all of the public lands the 16s and 36s which have been deeded to the State for schools, there certainly must have been some error in the surveys other than this section and it must have been made many years before the error occurred here or before the correction of error. Now



did the United States Government establish a pattern of dealing with those lands which involved this, on the one hand, that it should be 640 acres, no more or no less, or was the pattern of the United States Government interpreting the laws which you ask me to interpret here this pattern, that it was Section 16 or Section 36 regardless of the overage but in any event at least 640 acres?

Mr. Critchlow: I will say, if your Honor please, it was at least 640 acres.

Mr. Clark: That is our point.

The Court: But they did get some overage?

Mr. Clark: That is right.

Mr. Critchlow: In this very case, if your Honor please, they got overage in the Reed Section 36, and we don't dispute that they got it. There was probably maybe 40 acres or more than 640 acres in this Reed Section 36. That appears from Wilkes' survey.

Mr. Clark: That reminds me, I had forgotten one thing to ask a stipulation on.

Mr. Critchlow: For instance, Reed comes down here and he makes a survey, and instead of running, we will say, 80 chains from his corner to this corner (indicating) he runs around and he makes 81 chains. It is a mistake. Nevertheless he marks his boundary 81 chains. He comes down here and he may be one chain off here, he may be off two chains, and he marks his boundary there and marks it there and marks it there (indicating on map). It is the monuments on the ground that control.

So then here is Section 36. It was supposed to contain 640 acres and the statute says as near as may be. But if he has marked on the ground that additional area by his monuments, that is Section 36 and that passes. And if you look in the Wilkes' survey you will find that Tract 69 as surveyed out by Wilkes on the basis of the Reed survey contains more than 640 acres, but it is a section and it was at the time Section 36.

Now Carpenter's Section 36 is a different area. Our contention is that you can't get two Section 36s. This contains 300 acres of unsurveyed land, covers unsurveyed land. Supposing there had been an error——

The Court: What section was it under Carpenter's survey?

Mr. Critchlow: Before it was surveyed?

The Court: No, after it was surveyed.

Mr. Critchlow: It was called Section 36. Now our point is that just because it happens to be called Section 36, the State doesn't get it if its rights under the Act of 1853 have already been fulfilled. They may have called this anything, they might have thrown it into this lower tier of sections if they had wanted to. I don't know why they didn't.

The Court: But they did not.

Mr. Critchlow: They did not.

The Court: They made it Section 36.

Mr. Critchlow: That is right. Now if the Commissioner of the General Land Office, or the fellow

who has the supervision of the surveys, has the power by calling an area Section 36 when the State has already received all of its grants that it is entitled to in the township, why then of course they get it.

The Court: They have never called it.

Mr. Critchlow: But our contention is that he didn't have the power under the statute.

The Court: They have not called it anything but Section 36. It is still Section 36, is it not?

Mr. Critchlow: It is called Section 36.

The Court: And Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

Mr. Critchlow: And this is called Tract 69, that is right. That is the point in the case, if your Honor please. That is the real point in the case, as to whether or not they can get two Section 36s under the statute.

Mr. Clark: I wouldn't agree with that.

The Court: But this is not the full Section 36.

Mr. Critchlow: No.

The Court: If by designating this Section 36 that becomes the school land and by designating the other as Tract 69, then they had the right to take it away from the State.

Mr. Critchlow: But they didn't have a right to take it because it had vested as Section 36. They couldn't take it from you.

The Court: I see. Very well.

Mr. Clark had something he wanted to bring up, I believe.



Mr. Clark: Mr. Critchlow's statement seems to me, if the Court please, to proceed upon the assumption that there is a limitation expressed in the Federal Statute of 1853 to the effect that the State can't get more than 640 acres in Section 16 or Section 36 and there isn't anything of that kind in the act at all. The act gives all of Section 36. All that remains was to identify the land that passed pursuant to the grant.

But what I wanted to ask Mr. Critchlow to do, is to make another stipulation, which I am sorry to say I had forgotten, and that is on an important point. It is to this effect, if A. W. Sanborn, Deputy Surveyor General of the State of California, could be and were called to the stand in this case to testify, he would testify as follows:

"It sometimes happens that the State sections created by the United States survey, that is to say, Sections 16 and 36, exceed the number of acres, that is to say, exceed 640 acres in a section. In some cases the excess amounts to two or three hundred acres."

Mr. Critchlow: No, I will not stipulate to that.

Mr. Clark: Not even subject to objection?

Mr. Critchlow: No, because I would want to have a chance to cross-examine him.

Mr. Clark: He is dead.

Mr. Critchlow: I don't agree with the statement.

Mr. Clark: That is the way he testified.

Mr. Critchlow: He wasn't cross-examined. We

don't know who he is. Who was he, a State official?

Mr. Clark: Deputy Surveyor General of the State of California.

Mr. Critchlow: Of the State of California?

Mr. Clark: Yes.

Mr. Critchlow: Was he a California official or a United States official?

The Court: He was a California official.

Mr. Critchlow: Well, if your Honor please——

The Court: He was Kingsbury's deputy.

Mr. Critchlow: That would be incompetent, in any event, as his testimony could not vary the terms of the statute.

The Court: I think that that is material whether or not other Sections 16 and 36 have exceeded 640 acres and what has become of them. I think I can take judicial notice on examination of the plat maps in the Land Office that there are Sections 16 and 36 that exceed 640 acres. Where they are, I do not know.

Now what was the pattern established with relation to those? I know that in a number of them the State took the lieu lands.

Mr. Critchlow: If they are short they take the lieu lands.

The Court: They took lieu lands if they were narrower.

Mr. Critchlow: Yes.

The Court: And if they took lieu lands and if it was 680 acres, did they get 680 acres of lieu land or 640?

Mr. Critchlow: I think they got 640. They were all selected in that way.

The Court: The statute says they shall get the same fractional acreage in lieu land, as I remember reading it.

Mr. Clark: That is right.

Mr. Critchlow: Up to 640 acres, it specifies. It specifies the amount. I believe that is Section 851, your Honor.

Now I don't want to be misunderstood here. I think Mr. Clark misunderstands me. I didn't say that you never got more than 640 acres, because I will show you in this very case, this old Section 36 as surveyed by Reed—and there is no question but what the State got it—contains more than 640 acres. But it was a regular section and under the statute it says 640 acres more or less, or as near as may be, I believe is the language, as near as may be.

He marked it on the ground and they got it.

Now here you have another area which is surveyed and it is called Section 36.

The Court: When it was surveyed, Mr. Critchlow, the official of the United States who had that power to do so said that Reed's survey was worthless and fraudulent and so worthless that no title could be passed under it.

Mr. Critchlow: He might say that, if your Honor please, but if he did say it it was of no force and effect because there is no question about the fact that the area did pass under it. That is the reason



they had to go to work and have this other survey made, in order to show just what passed.

Now the pattern of public surveys as shown by the statutes is that Section 36 shall be in the southeast corner, that the township should be six miles square, and that each section shall be 640 acres as near as may be.

Now you have these surveys made at different times and sometimes the township happens to be short, either because of water, such as a lake, or because of other surveys. They say in such cases the excess or deficiency—the statute says this, shall be thrown into the northern or the western tier of sections, which means that as far as Section 36 is concerned, which the statute says goes to the State, it shall be a section containing 640 acres as near as may be and not two sections.

The Court: But it is not two sections.

Mr. Critchlow: Yes, it is. There is no question but what that is Section 36 under the Reed survey and that it passed.

Mr. Clark: I wonder if I might ask Mr. Critchlow a question along that line, with the Court's permission. Suppose the original Reed survey had placed 943 acres in Section 36 and that that had been proved, would the State have gotten it under the Act of 1853?

Mr. Critchlow: I can't imagine making an error of that sort, or an error of that sort happening down in that southeast corner.

Mr. Clark: You are not meeting me on my assumption, that is all.

Mr. Critchlow: I can't imagine such a thing.

The Court: Coming back to the matter of evidence here, you decline to accept Mr. Clark's stipulation?

Mr. Clark: Is there any form in which you would take that stipulation? The man testified to it in the State case, as you know. It was brought out of him on cross-examination.

Mr. Critchlow: I think as far as that is concerned, that the Court can take judicial notice of these plats and the surveys and if you can find any illustrations of that sort, and if the Court wants to admit them, that is all right, but I can't admit that testimony because I don't think it is true, not as far as Section 36 is concerned.

Mr. Clark: Will you stipulate that he so testified in that case?

Mr. Critchlow: What else have you got in there?

Mr. Clark: I just read that portion. You can read the whole thing. His testimony wasn't long. That was just taken from one paragraph of his cross-examination, if you will stipulate that he so testified in that case

The Court: Maybe he will want to stipulate to the rest of it too.

Mr. Clark: If you want to stipulate to the whole thing, that is all right with me.

Mr. Critchlow: I don't want to stipulate to the whole thing unless I have read it.

The Court: Do you have facilities available to use to ascertain these 16s and 36s in the state of

California? I should imagine they are in every state in the western area and probably in a lot of eastern states also.

Mr. Critchlow: I don't think so. That is disregarding the direct commands of the statute.

Mr. Clark: Even if they are, if there is jurisdiction to make the error the same as your Mexican land grant cases, if the survey included 500 acres that he shouldn't have included and the patent issued for that, why that is the end of it. That is our position in this case.

Mr. Critchlow: That doesn't have anything to do with this case.

Mr. Clark: It certainly does.

Mr. Critchlow: No, it does not.

The Court: It seems to me, Mr. Critchlow, that if the United States has established a pattern of dealing with errors in surveys or resurveys—this is not the first resurvey that has been made, is it?

Mr. Critchlow: No.

The Court: If the United States has established that pattern in dealing with their own surveys in public lands of granting whatever was in it, even with a surveyor's error, then that would seem to me to create a situation which I could not overlook.

Mr. Critchlow: But this wasn't in that. This area wasn't in that Reed section.

I call your Honor's attention to the case of *New Mexico v. Colorado*. And, by the way, the survey



in that case, the resurvey in that case was made by the same fellow who made this one, Carpenter, and Carpenter in that case was directed to erect monuments of the earlier surveys, which he did, and the Land Department accepted it so far as it could, and yet the Court said, no, you go back to that old survey.

The Court: I have not read that case. I glanced quickly at the Wyoming case, which did not seem to me to be in point. There might be a lot of dicta in there which may be in point, but in *United States v. Wyoming* there the State was endeavoring to establish a right to certain lands prior to the time they were surveyed, and the Supreme Court held in that case, as I glanced at it quickly, that the State did not get any right until it was surveyed.

Mr. Critchlow: That is correct. And that was cited only to the point that the State does get the right when the survey is final.

The Court: When did the survey become final here?

Mr. Critchlow: When it was approved. This Reed survey became final, as far as the State is concerned, on April 27, 1869.

The Court: But it was in error.

Mr. Critchlow: That doesn't make any difference.

The Court: It was fraudulent.

Mr. Critchlow: That doesn't make any difference.

The Court: It was worthless, the Land Office said.

Mr. Critchlow: The Land Office can say it was worthless, but it wasn't because the State got it, has had it ever since, and the Land Office couldn't take it away from them.

Mr. Clark: They could by requisition.

Mr. Critchlow: If you want to bring direct proceedings on the ground of fraud and claim the State was a party to it, all right.

The Court: There isn't any question to this case that at the time the State got his this was mineral land, or known oil land?

Mr. Critchlow: No, that is not in the case.

Mr. Clark: No, it is not involved at all.

Mr. Critchlow: It may have been known but I don't know whether it was known or not.

The Court: When are you going to let me know whether or not you accept the stipulation that Mr. Sanborn did or did not so testify?

Mr. Critchlow: I will agree that he so testified, subject to the objection that it is hearsay, incompetent, irrelevant, immaterial, doesn't tend to prove or disprove any issue in the case, calling for a conclusion of the witness, and it is an attempt to establish a pattern or custom, without showing any basis of his knowledge. I object to it on all grounds.

The Court: And all the rest of the grounds?

Mr. Critchlow: All the rest of them, if there are any.

Subject to those objections, I will accept the stipulation.

The Court: You might have a good objection there.

Will you stipulate that he was the Deputy Surveyor General of the State of California and had been—for how long was he?

Mr. Clark: It doesn't state in this transcript, I am afraid, as to how long he had been but he had been there for many years.

Mr. Critchlow: If they will state that that is a fact I will stipulate to it. In other words, I won't put them to proof of that fact.

Mr. Clark: No, your Honor, it doesn't state how long he had been deputy.

The Clerk: Where is Exhibit 15, Mr. Critchlow?

Mr. Critchlow: We withdrew it.

The Clerk: I want to make a record of it.

The Court: What is the final position on the stipulation? Were you awaiting a ruling from me? You say you could not tell how long he had been Deputy Surveyor General?

Mr. Clark: No, I don't know. I can find out from the records up in the Surveyor General's office.

Mr. Critchlow: If you will say that he was a Deputy Surveyor General of the State of California, I will accept it.

Mr. Clark: I have read it in the record.

Mr. Critchlow: All right. I will stipulate to it.

The Court: Do you expect to develop in your



brief any information concerning the number of Sections 16 and 36?

Mr. Clark: It is pretty difficult to find, if your Honor please. We have searched the General Land Office reports on that and there are instances of it but they are generally overlooked. It apparently is just common practice to disregard things of that kind. Nobody pays any attention to it.

The Court: They are on the surveys?

Mr. Clark: They are on the surveys.

The Court: You have to look at the plat of each township.

Mr. Clark: They are on the surveys but we would have to have so many surveys examined pretty carefully, and thus far we have limited our examination of surveys to plats and surveys surrounding this particular area here, Township 29. We can extend that search and send a man to Washington to look into it and see.

The Court: You have them all in the Sacramento Land Office, do you not?

Mr. Critchlow: You have them in San Francisco or Sacramento or in Los Angeles.

The Court: You have all the old Visalia and Sacramento records in Sacramento now, the old books.

Mr. Clark: I can do that.

Mr. Critchlow: And the southern records are down in Los Angeles

The Court: It would involve a skilled person going through there and looking at each one.

Mr. Clark: I can send one of our young men up there and get certified copies of those that are pertinent.

The Court: In any event you do that and you can develop that in your brief. I think I can take judicial notice of public records.

Mr. Critchlow: Yes, I think so.

Mr. Clark: Yes.

The Court: What do you want to do next? Mr. Clark, when will you finally get down to this case?

Mr. Clark: I thought we were finally down to it now. I have nothing that would interfere with the case during the remainder of this month except the possible matter on May 3rd, a notice for summary judgment in Federal Court in San Francisco. Otherwise I am at the disposal of Court and counsel on this case throughout the entire month.

The Court: You have no more evidence to offer?

Mr. Clark: No.

The Court: How soon can you develop that information?

Mr. Clark: I imagine we ought to be able to do it, if we can do it at all, within a week.

Mr. Critchlow: Let me ask you, because I want to make some check myself, as I say, I think that probably there are lots of sections like this particular one which is slightly over 640 acres, maybe 20 or 30 acres, through an error in chains or something of that sort, but I don't think you are ever going to find any that would come close to 300 acres.

Mr. Clark: We can try. But you are not going to complain if we find one that is 250?

Mr. Critchlow: I was going to say if you find one for 250 that is not going to control the construction of the statute. I will tell you that.

The Court: What is your pleasure in the matter? Do you want time for briefs or is all your law in, this law that you have given me already?

Mr. Critchlow: I think that there is no dispute between us except as to the interpretation of the Federal statutes.

Mr. Critchlow: How do you want to handle it, on briefs or argue it orally and have the argument taken down and handed to the Court?

Mr. Critchlow: Either way. It is all right with me

The Court: I think in this matter it would be more helpful if you would file briefs and then I may set it down for argument because I get more out of argument if I know what kind of questions to ask during the course of the argument. Now I am pretty much completely at sea and I do not have available here in Fresno—I have available in my Los Angeles office—a complete set of statutes. The set here only begins with Volume 17 I think. I do not think that they would be material except to follow the derivation of those statutes. There is no question about the derivation as it finds expression in Section 851?

Mr. Clark: No.

The Court: Very well. How long do you want to file briefs, 10 days?



Mr. Critchlow: I think 10 days is sufficient. I would like to have a little time to check. I can check those records down south if you can check them up north, Mr. Clark.

The Court: Suppose you each file briefs in 10 days and each have 5 days to reply to the other's brief. Will that be satisfactory?

Mr. Critchlow: That is all right.

Mr. Clark: Yes.

The Court: And if I want argument either one of you will be available to come here or to Los Angeles?

Mr. Critchlow: That is right.

Mr. Clark: Subject to one thing, and this is off the record

(Remarks outside the record.)

The Court: Did you want this Morris Cohen permit?

Mr. Critchlow: Yes.

The Court: Can you give me the date that that permit was finally canceled?

Mr. Critchlow: I will find it, if your Honor please, down in Los Angeles.

The Court: You are not offering that in evidence?

Mr. Critchlow: No.

The Court: You are not making any point of the fact that the Government did issue two oil and gas prospecting permits on that?

Mr. Critchlow: I had them merely because of the allegation in the complaint that the Government

had never made any claims to this area and I wanted, if any evidence should be offered on that point, to show the issuance of these oil and gas leases which cover this area covered by the patent to Jordan.

The Court: Oil and gas prospecting permits?

Mr. Critchlow: Permits; yes.

The Court: They were both canceled because there was no development work done?

Mr. Critchlow: That is my recollection, if your Honor please.

The Court: I suppose if they introduced evidence on that, why then the other side would be entitled to go out and interview old settlers to see how many notices they had posted to keep off of this land because it belongs to so-and-so.

Mr. Critchlow: I am not offering it if your Honor please, and they haven't offered any evidence on that.

The Court: Each side will have 10 days for opening and 5 days for reply.

Mr. Clark: Thank you, your Honor.

Mr. Critchlow: Will your Honor take the files and exhibits down to Los Angeles?

The Court: I will keep them here as long as I am here.

Mr. Critchlow: The reason I ask is because those are the only copies which I have of a number of the exhibits, and in writing the brief I might want to make reference to them.

The Court: I expect to be here all this week.

Mr. Critchlow: Yes, your Honor.

The Court: Very well. Court is adjourned.

(Whereupon, at 4:25 o'clock p.m., court was adjourned.)

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### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 30th day of April, A.D., 1948.

.....

Official Reporter.

[Endorsed]: Filed U.S.D.C. November 1, 1948.

[Endorsed]: Filed U.S.C.A. January 5, 1950.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages



numbered from 1 to 122, inclusive, contain the original Complaint to Remove Clouds, to Quiet Title and to Enjoin Trespasses on Certain Real Property in Kern County, California; Answer; Disclaimer; Amendment to Complaint; Amended Answer to Amended Complaint; Two Stipulations and Orders for Substitution of Parties; Memorandum Prior to Trial; Plaintiff's Memorandum Pursuant to Local Rule 12; Appendix to Plaintiff's Brief; Appendix to Opening Brief for Defendants; Memorandum; Judgment for Defendants; Notice of Appeal; Statement of Points Under Rule 75(d) Federal Rules of Civil Procedure; Designation of Contents of Record on Appeal; Affidavit of Service by Mail; Order Extending Time for Filing and Docketing Record on Appeal; Designation of Additional Portions of Record, Proceedings and Evidence on Appeal Under Rule 75(a) Federal Rules of Civil Procedure; Affidavit of Service by Mail; and Order Extending Time for Filing and Docketing Record on Appeal which, together with copy of Reporter's Transcript of Proceedings on April 26, 1948, original Plaintiff's Exhibits 1, 1-A, 2, 3, 4, 4-A, 5, 6, 6-A, 6-B, 6-C, 7, 8, 9 10, 11, 12, 12-A, 12-B, 12-C, 12-D, 12-E, 13, 14, 15 for identification, 16, 16-A, 16-B, 16-C, 16-D, 17 and original Defendants' Exhibit A, and certified copies of certain records in the United States Department of the Interior, Bureau of Land Management and of the Division of State Lands, State Lands Commission, State of California of which the court took judicial notice,

transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 3rd day of Jan., A.D., 1949.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

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[Endorsed]: No. 12448. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Florence K. Livingston, Executrix of the Will of Bronte M. Aikins, deceased (sued herein as B. M. Aikins), Florence K. Livingston, executrix of the last will of Florence L. Kirchen, deceased, George B. Parker, Nelle Grenville Parker, Vernon S. Batz (also known as V. S. Batz), Edna Batz, D. M. Jordan, George Hay Corporation, Ltd., a corporation, Honolulu Oil Corporation, a corporation, Seaboard Oil Company of Delaware, a corporation and the County of Kern, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed January 5, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
For the Ninth Circuit

Appeal No. 12448

(Civil Action No. 617-ND District Court, Southern District of California, Central Division.)

UNITED STATES OF AMERICA,

Appellant,

vs.

A. L. AIKINS (and BRONTE M. AIKINS, as executor of the last will of A. L. Aikins, deceased, by substitution), B. M. AIKINS, FLORENCE L. KIRCHEN (and FLORENCE K. LIVINGSTON, as executrix of the last will of Florence L. Kirchen, deceased, by substitution), GEORGE B. PARKER, NELLE GRENVILLE PARKER, VERNON S. BATZ (also known as V. S. Batz), EDNA BATZ, D. M. JORDAN, GEORGE HAY CORPORATION, LTD., a corporation, HONOLULU OIL CORPORATION, a corporation, SEABOARD OIL COMPANY OF DELAWARE, a corporation, THE COUNTY OF KERN, JOHN DOE, RICHARD ROE, MARY COE, BLACK CORPORATION, and WHITE CORPORATION,

Defendants.



STATEMENT BY UNITED STATES OF  
AMERICA, APPELLANT, OF POINTS TO  
BE RELIED UPON ON ITS APPEAL AND  
DESIGNATION OF PARTS OF THE REC-  
ORD NECESSARY FOR CONSIDERATION  
OF SAID APPEAL.

United States of America, appellant, hereby adopts the statement of points upon which it intends to rely on this appeal, heretofore filed in the above entitled action in the United States District Court for the Southern District of California, Central Division, appearing at pages 105 to 106, inclusive, of the certified record herein, and states that the points therein set forth are the points on which said appellant intends to rely on its said appeal.

And United States of America, appellant, hereby designates the following parts of the record which it believes to be necessary for the consideration of its said appeal, and requests that such parts be printed:

1. Complaint filed May 2, 1947, appearing at pages 2 to 12, inclusive, of the certified record herein. (N.B.—Exhibits A, B, and C attached to said complaint are respectively uncertified copies of certain certified plats introduced in evidence and hereinafter designated for printing as plaintiff's exhibits 3, 11 and 14. A duplication of these plats would seem to be unnecessary.)

2. Answer of defendants filed June 30, 1947,

appearing at pages 13 to 18, inclusive, of the record herein.

3. Disclaimer of County of Kern appearing at page 21 of the record herein.

4. Amendment to complaint filed August 11, 1947, appearing at pages 23 to 24, inclusive, of the record herein.

5. Amended answer to amended complaint filed August 11, 1947, appearing at pages 25 to 30, inclusive, of the record herein.

6. Memorandum opinion of the District Court filed May 20, 1949, appearing at pages 84 to 98, inclusive, of the record herein.

7. Judgment for defendants entered August 22, 1949, appearing at pages 99 to 101, inclusive, of the record herein.

8. Notice of appeal filed October 20, 1949, appearing at pages 102 and 103 of the record herein.

9. Statement of points under Rule 75 (d) FRCP, filed November 10, 1949, appearing at pages 105 and 106 of the record herein.

10. Designation by plaintiff and appellant of contents of record on appeal filed November 10, 1949, appearing at pages 107 and 108, of the record herein.

11. Designation by defendants and appellees of additional portions of the record on appeal filed November 22, 1949, appearing at pages 112 and 113 of the record herein.

12. Clerk's docket entries, appearing at pages 119 to 122, inclusive, of the record herein.

13. Reporter's transcript of proceedings filed November 1, 1948, (74 pages).

14. The following exhibits:

Plaintiff's exhibits 3, 6, 6-a, 6-b, 6-c, 8, 9, 11, 12-a, 12-b, 12-c, 12-d, and 12-e (N.B.—The foregoing exhibits, viz., 12-a, b, c, d, and e, are separate documents contained in a file of documents marked for identification as Plaintiff's Exhibit 12), 14, 16-a, 16-b, and 16-d (N.B.—The foregoing exhibits, viz., 16-a, 16-b, and 16-d are a Complaint, an Answer, and a Judgment as said documents are set out in a document marked for identification as Plaintiff's Exhibit 16, at pages 3 to 13, 15 to 23, and 37 to 39 thereof), and 17.

Defendants' exhibit "A."

15. This statement of points and designation of the parts to be printed.

16. Certificate of Clerk.

Dated at Los Angeles, California, this 5th day of January, 1950.

/s/ ERNEST A. TOLIN,

United States Attorney.

/s/ FRANCIS B. CRITCHLOW,

Special Assistant to the Attorney General, Attorneys for Appellant United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed January 5, 1950.



[Title of Court of Appeals and Cause.]

STIPULATION THAT EXHIBITS MAY BE  
CONSIDERED IN THEIR ORIGINAL  
FORM WITHOUT REPRODUCTION

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, that upon the appeal of the above-entitled cause the Court may consider, as being and constituting a portion of the record on appeal and without the necessity of having the same printed or otherwise reproduced pursuant to Rule 19 of the Rules of this Court, the following documents of which judicial notice was taken by the district court upon the trial of this cause:

(1) All of the exhibits contained in the appendix to plaintiff's brief filed June 4, 1948, said exhibits being more particularly described in item 12 of appellant's designation of contents of record on appeal filed November 10, 1949, and appearing at pages 107 and 108 of the record herein.

(2) The officially certified copies of official plats of survey of various townships within the State of California, made and approved by or under the authority of and bearing the respective approval dates of United States Surveyors' General, The General Land Office, or the Department of the Interior, which were designated as an additional portion of the record by defendants and appellees Designation of Additional Portions Of The Record On Appeal

filed November 22, 1949, appearing at pages 112 and 113 of the record herein.

Dated: January 18, 1950.

ERNEST A. TOLIN,  
United States Attorney.

FRANCIS B. CRITCHLOW,  
Special Assistant to the  
Attorney General.

By /s/ FRANCIS B. CRITCHLOW.  
Attorneys for Plaintiff,  
United States of America.

WILLIAM A. BREEN,  
Attorney for Defendant.

FLORENCE K. LIVINGSTON  
as Executrix of the Last Will  
of B. M. Aikins, Deceased.

PHILIP M. WAGY,  
Attorney for Defendants George Hay Corporation,  
Ltd., George B. Parker, Nelle Grenville Parker,  
Vernon S. Batz, Edna Batz, D. M. Jordan.

PATRICIA LANE,  
Attorney for Florence L. Livingston, as Executrix  
of the Last Will of Florence L. Kirchen, De-  
ceased.

A. W. MITCHEM,  
GILBERT E. HARRIS,  
HERBERT W. CLARK,  
Attorneys for Defendants Honolulu Oil Corpora-  
tion and Seaboard Oil Company of Delaware.

By /s/ HERBERT W. CLARK,  
Attorneys for Defendants.

It Is So Ordered This 20th day of January, 1950.

/s/ WILLIAM DENMAN,  
Judge of the United States  
Court of Appeals.

/s/ WILLIAM HEALY,

/s/ HOMER BONE,  
Judges U. S. Court of Appeals  
for the Ninth Circuit.

[Endorsed]: Filed January 23, 1950.